



Pontiac Charter Revision Commission

Tameka Ramsey, Chairperson
Kermit Williams, Vice Chairperson
Norbert Burrows
Gill Garrett
Bryan E. Killian

Lucy Payne
Scott Stewart
Bruce Turpin, DDS
Jose Ybarra, III

47450 Woodward Ave. Pontiac, MI 48342 Phone: (248) 758-3200 Website: <http://www.pontiac.mi.us>

Sheila Grandison, MiPMC, CMC, Deputy City Clerk

10th Session

MEETING AGENDA

March 23, 2023 at 6:00 p.m.

Meeting Location: City Council Chambers
Pontiac City Hall
47450 Woodward Ave. Pontiac, MI 48342

- I. Call to Order**
- II. Roll Call**
- III. Authorization to Excuse Commissioners**
- IV. Amendments to and Approval of the Agenda**
- V. Approval of the Minutes**
 - A. January 26, 2023
- VI. Agenda Items**
 - B. Subcommittee Reports
 - 1. Rules & Planning
 - 2. Outreach
 - 3. Personnel
 - 4. Research
- VII. Public Comment**
- VIII. Charter Revision Handout Booklet (start on page 93)**
- IX. Guide for Charter Commission (new handout)**
- X. Closing Comments**
- XI. Adjournment**

**Official Proceedings
2022 Pontiac Charter Revision Commission
9th Session**

Call to order

A Meeting of the 2022 Charter Revision Commission of Pontiac, Michigan was called to order by Chair Ramsey at the City Hall Council Chambers, 47450 Woodward Ave Pontiac, MI 48342 on Thursday, January 26, 2023 at 6:02 p.m.

Roll Call

Members Present – Norbert Burrows, Brian Killian, Tameka Ramsey, Scott Stewart, Kermit Williams and Jose Ybarra III

A quorum was announced.

Excuse Commissioners

23-1 **Motion to excuse Commissioners Gill Garrett, Lucy Payne and Bruce Turpin for personal reasons.** Moved by Commissioner Williams and second by Commissioner Ybarra III.

Ayes: Killian, Ramsey, Stewart, Williams, Ybarra and Burrows

No: None

Motion Carried

Approval of the Minutes

23-2 **Motion to approve meeting minutes from December 15, 2022.** Moved by Commissioner Stewart and second by Commissioner Williams.

Ayes: Killian, Stewart, Williams, Ybarra and Burrows

No: None

Abstain: Ramsey

Motion Carried

Commissioner Bruce Turpin arrived at 6:05 p.m.

Amendments and or Approval of the Agenda

23-3 **Motion to remove item #C (Topic of the Charter) from the agenda, move up item #D (Subcommittee Reports) as new item #C, add Charter Revision Handbook as the new item #D, and approve the agenda as amended.** Moved by Commissioner Williams and second by Commissioner Ybarra III.

Ayes: Ramsey, Stewart, Williams, Ybarra, Burrows and Killian

No: None

Abstain: Turpin

Motion Carried

Agenda Items

History of the Charter Commission

Subcommittee Reports

1. Rules & Planning – No reports at this time

2. Outreach – Commissioner Ybarra III reported information on social media and commercial
3. Personnel – No reports at this time
4. Research – No reports at this time

Introduction and Discussion of the Charter Revision Handbook (Agenda add-on)

Approve Charter Revision 2023 Monthly Meetings

23-4 **Motion to approve the Charter Revision 2023 Monthly Meetings. (Except May 25, 2023 due to City Council Budget Session)** Moved by Commissioner Williams and second by Commissioner Stewart.

Ayes: Ramsey, Stewart, Turpin, Williams, Ybarra, Burrows and Killian

No: None

Motion Carried

Public Comment

1. Leona Patterson
2. Darlene Clark

Closing Comments – Commissioner Burrows, Commissioner Ybarra III, Commissioner Stewart, Commissioner Turpin, Commissioner Killian, Vice Chair Williams and Chair Ramsey made closing comments.

Adjournment

23-5 **Motion to adjourn the meeting.** Moved by Commissioner Williams and second by Commissioner Stewart.

Ayes: Stewart, Turpin, Williams, Ybarra, Burrows and Killian

No: Ramsey

Motion Carried

Chair Tameka Ramsey adjourned the meeting at 7:18 p.m.

Sheila R. Grandison
Deputy City Clerk

Charter Revision Handbook - Table of Contents

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Ken Verburg, Boundary Commission Chair

Bio

Chapter 3 Making the Most of Charter Commission Meetings

Robert Queller, Citizens Research Council Executive Director

Bio

Chapter 4 Getting Started

Sinclair Powell, Municipal Attorney, Charter Consultant

Bio

Chapter 5 Critical Decisions for Charter Commissions

Dr. Susan Hannah, Vice Chancellor for Academic Affairs Indiana University-Purdue University Fort Wayne

bio

Chapter 6 Tapping Appropriate Resources

William L. Stuede, Michigan Municipal League, General Counsel

Bio

Chapter 7 Relations with Other Actors

W. Peter Doren, Municipal Attorney

Bio

Chapter 8 Publicizing the Work of the Charter Commission

Thomas M. Donnellan, Municipal Attorney, Charter Consultant

Bio

Chapter 9 The Attorney General's Role in Charter Review and Approval

Milton I. Firestone, Assistant Attorney General

George M. Elworth, Assistant Attorney General

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W. Peter Doren, Municipal Attorney

Thomas P. Dudenhofer, Chair, Stanton Charter Commission

Bios

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 20th and near the 21st 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.

Mr. Sinclair Powell, municipal attorney

Mr. Kenneth VerBurg, Boundary Commission Chair

Mr. Dennis Day, Chairman Memphis City Charter Advisory Committee

Dr. Susan B. Hannah, Vice-Chancellor for Academic Affairs Indiana University-Purdue University Fort Wayne

Dr. Joe Ohren, Faculty Public Administration/Political Science Dept/ Eastern Michigan University

Mr. Thomas M. Donnellan, municipal attorney and charter consultant

Mr. Robert Hegal, charter consultant

Mr. Dennis McGinty, East Lansing City Attorney

Mr. George B. Davis, municipal attorney

Mr. Richard A. Wysz, Chairman Hamtramck Charter Revision Commission

Prof. Ellis Perlman, Dept Political Science, University of Mich.-Flint

Alvan Knot, Lansing City Attorney

Daniel C. Matson, DeWitt City Attorney, charter consultant

Ronald W. Lowe, Plymouth City Attorney

Eric D. Williams, Big Rapids City Attorney

Peter Letzmann, Troy City Attorney

William C. Mathewson, Staff Attorney, MML

William L. Stuede, General Counsel, MML

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.

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.

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.

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.

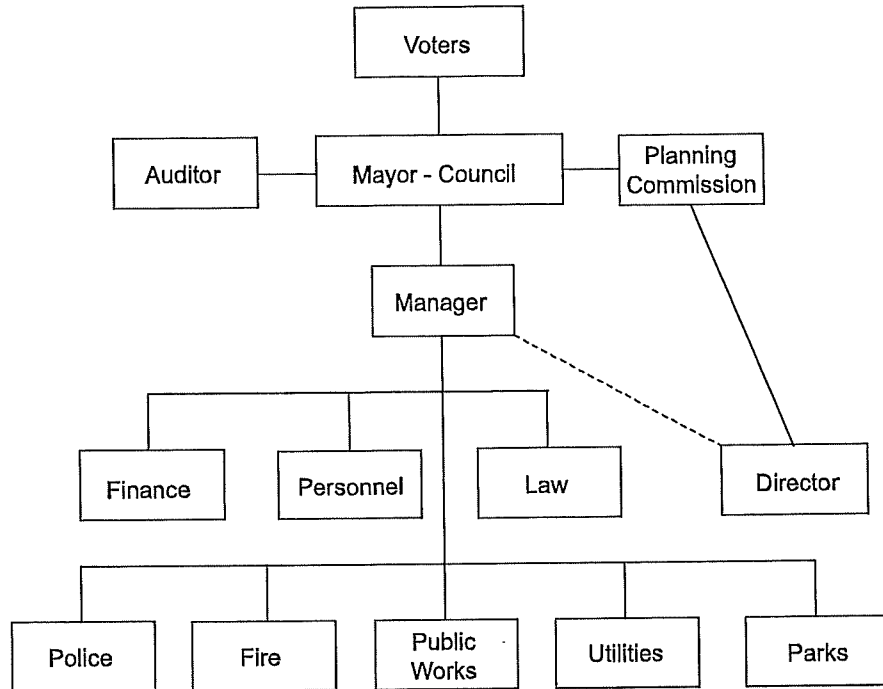
Constitutional home rule is self-executing in some states and not so in others. Non-self-executing home rule, which Michigan leaders wrote into the 1908 Constitution, leaves it up to the state legislature to implement the home rule powers. Michigan's legislature did this by enacting the Home Rule City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

Council-Manager Form

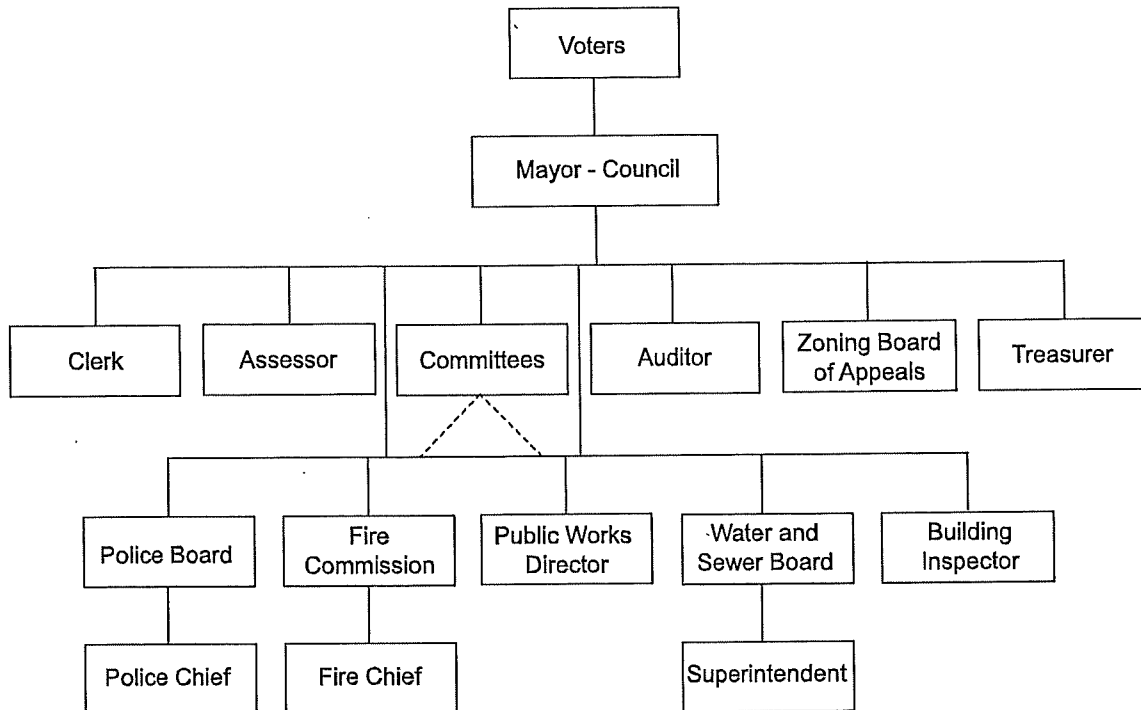


Mayor-Council Plan

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.

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.

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

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

The Role of a Charter Commission: An Overview

by Kenneth Verburg

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.

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

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?

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.

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.

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

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.

- 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

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

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

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,

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

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

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.

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

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, 7th Edition – National Civic League
- B. Other Michigan Charters – Michigan Municipal League

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

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

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%

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.

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*, 8th Ed. (2003) 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

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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Relations with Other Actors

by W. Peter Doren

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

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.

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.

Publicizing the Work of the Charter Commission

by Thomas M. Donnellan

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?

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

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

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

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.

Thomas M. Donnellan

Thomas M. Donnellan has had a richly diverse experience having served as judge of the 68th 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.

- 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

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.

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."

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.

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).

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

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

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.

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.

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.

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.

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

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

So You Want a New Charter

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

Among the states of the Union, some 25 of them have home rule constitutional provisions which permit local drafting and adopting of city charters.¹ 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

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

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

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.³

- 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 8th 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 6th 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.

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.

This paper and the Detroit City Charter Revision series was financed, in part, by grants from Community Foundation for Southeast Michigan, Hudson-Webber Foundation, Matilda R. Wilson Fund and NBD Bank.

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.

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.

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.

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.

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

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

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.

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.

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.

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	_____	_____	_____

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. Bromage¹

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

¹ 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.

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

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,

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

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

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."⁴

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

³ 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.

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

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 20th 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

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.

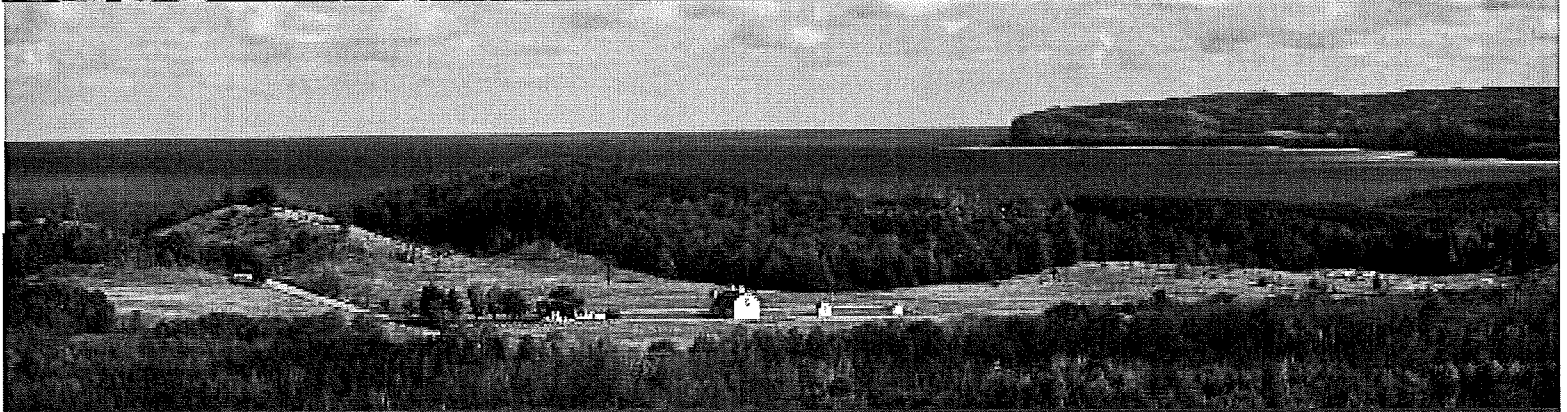
Appendix A

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
Total	533	265	7	1	48	213

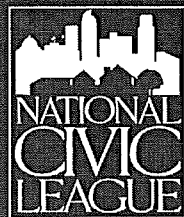
Leslie	2,044 *	Oak Park	29,793 *	Sault Ste Marie	16,542 *
Lincoln Park	40,008	Olivet	1,758	Scottville	1,266 *
Linden	2,861 *	Omer	337	South Haven	5,021 *
Litchfield	1,458 *	Onaway	993 *	South Lyon	10,036 *
Livonia	100,545 *	Orchard Lake Village	2,215	Southfield	78,296 *
Lowell	4,013 *	Otsego	3,933 *	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	Pottsville	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



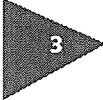
SIXTH EDITION

Guide for Charter Commissions



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Foreword



Imagine being a member of the Constitutional Convention in Philadelphia and having to make critical decisions that would determine the course of American politics and government for generations to come. It's not too much of an exaggeration to suggest that serving on a local charter commission is the closest thing we have to being part of a constitutional convention. In home rule cities, residents are able to draft and revise their own governing charters and make decisions about election procedures, ethical codes, legislative methods and administrative structures.

Most of us learn about the "separation of powers" approach of the framers in our civics or American history classes, but few of us are given much information about the various theories and structures of local government. The federal constitution is mute on how cities should be governed. The "city council/city manager" form of government, which a majority of cities have adopted, has a very different set of arrangements from the constitutional framework. It's not surprising that when members of the public call us for information on charters, their questions often betray a surprising lack of knowledge about how and why local government works the way it does.

When the framers met in 1787, they were working without blueprints, armed only with their knowledge of classical history and their familiarity with works of Locke and Montesquieu. Since the early 1900s, charter commissioners have had the benefit of models and research materials developed by the National Civic League. The league published its first Guide to Charter Commissions in 1945. During the years that followed, the various editions of the guide have served as the most widely used and recognized source on the complex process of reviewing and revising local charters. The last edition, issued in 1991, was one of our top selling publications.

When it came time to republish it, however, we decided enough years had passed to justify a substantial revision and redrafting. Although the old edition served as a source for this document, the Sixth Edition represents a considerable change in tone, content and structure. The chapters have been revised and reordered and the language made less formal, so the guide will be more accessible for lay users. The primary author of the new guide is Wendy Hassett, Ph.D., who worked with us on the various drafts of the new document. Wendy is a Clinical Associate Professor of Public Affairs at The University of Texas at Dallas (UTD). Before joining the faculty at UTD, she worked as an assistant city manager and has over twelve years of experience in local government.

We would also offer our thanks to the reviewers of the guide. Terrell Blodgett, a former chairman of the National Civic League, and a Professor in Urban Management at the LBJ School of Public Affairs at the University of Texas at Austin, was instrumental in initiating this revision process. James Svara, Ph.D., a professor at the School of Public Affairs at Arizona State University and a participant in the committees to revise the 7th and 8th editions of the Model City Charter, served as primary reviewer of the document and offered key insights and feedback.

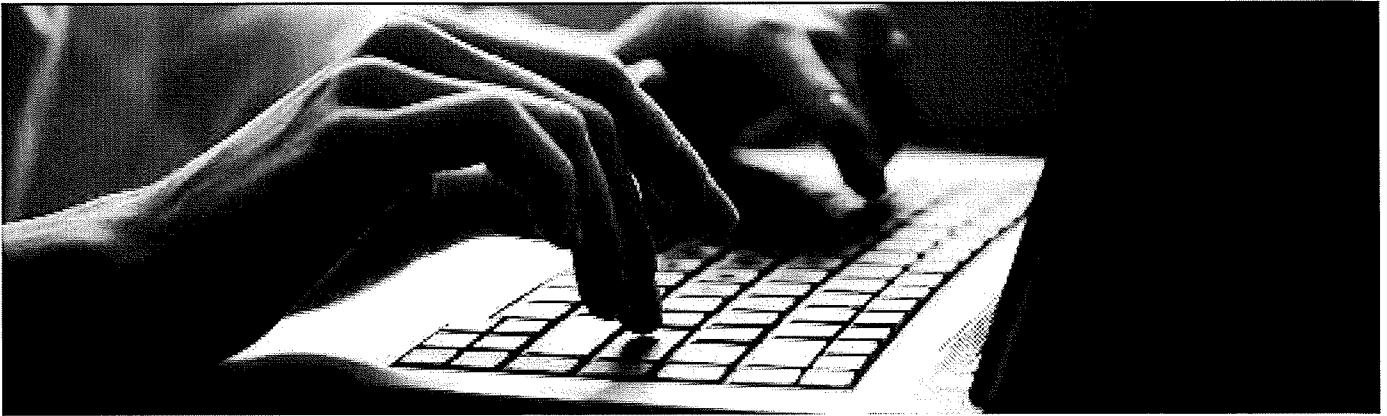
We also wish to thank an anonymous donor, the NCL Board, Council of Advisors and Board Chairs and NCL chief information officer Mike McGrath for their contributions to this project. The guide is intended to be used as a supplement to the Eighth Edition of the Model City Charter, the "blueprint" for government structure used by thousands of community around the world.

Gloria Rubio-Cortés

President, National Civic League

Chapter One

4



Introduction to the Charter Process

Of all levels of government, local government is by far the most common point of contact for the average citizen. In fact, it is difficult to imagine any important aspect of American life that is insulated from the influence of local government. An individual may interact with federal or state agencies a handful of times in an entire lifetime, but he or she will interact with local government employees on a much more frequent basis—while speaking to a police officer, paying a water bill or greeting the people who have come to collect the garbage.

Quite a lot is expected from local governments. They provide a vast array of services to residents, everything from public safety to utilities, recreation, education, transportation, storm water management, zoning and land use regulation and enforcement, construction permitting and inspection, and much more. And while cities, towns, villages, and counties are increasingly expected to be self-reliant in providing these services, they are also expected to execute policy mandates handed down from state and federal governments.

Local governments are also expected to adjust to changing times and expectations. For example, there was a time when there were no cities providing recycling services. However, a heightened sensitivity to environmental concerns brought that issue to the forefront. Today, recycling is a common service provided at the local level that a growing number of citizens have come to expect. Without a doubt, managing and administering the business of local government is a challenging task that requires those in leadership positions to carry out an expanding array of public services efficiently and effectively day after day.

The journey of a local government is one fraught with challenges and achievements, successes and failures, risks and rewards. One of the most interesting things about local governments is the flexibility they have in forging their own paths. Within some constraints set by state law, municipal governments create their own futures through the decisions made by citizens and local elected officials. One important way that a local government controls its own destiny is through its charter.

A charter is the foundation of a local government and functions as the municipal equivalent of a state or federal constitution, setting forth guiding principles for governance. Composed by citizens, a charter specifies the most fundamental relationships between a government and its community. It establishes the framework for how a local government operates in terms of its structure, responsibilities, functions, and processes. The way public officials are elected, the form of government, and the role citizens play in local government are just a few examples of the important choices articulated in a charter.

Because a charter is the vehicle that allows a local government to officially control its operations, many cities adopt a charter soon after formal incorporation as a municipality. And, in spite of the differences in the legal status of cities and counties, many counties also adopt charters. This is particularly the case with counties that perform functions similar to those commonly provided by municipalities.

A charter can be amended by following the process set out in its respective state constitution and sometimes in the charter itself. Although some states permit the council to make charter changes, any charter amendment proposed by a charter commission must be formally considered by the citizens in an election, or referendum, before it can be officially incorporated into the charter. Citizen approval is important because a local government's charter influences virtually every aspect of its operations, for better or for worse.

Having competent, responsive, and effective individuals filling elected and administrative positions is critical to the success of any local government. The charter plays a role in this as well. If the local government runs efficiently, effectively, and openly, it is viewed in a positive light. Capable and civic-minded citizens are much more likely to volunteer their time and talents to an organization that is well-regarded. On the other hand, good men and women are reluctant to align themselves with a struggling government guided by an ineffective or out-of-date charter. Whether those in public positions are experienced or novice, they are much better positioned to be effective in moving the community forward if the locality is working with a well-constructed charter. Clearly, the benefits of an effective local charter are far-reaching.

Reviewing the Charter — The Big Picture

When facing a new or unfamiliar task, it is often helpful to step back and examine the “big picture.” So, what brought you here? What has led your community or local government to the place where an examination of its charter is warranted? What are you trying to achieve?

Understanding the circumstances surrounding the charter process is important. There can be many different reasons behind the initiation of a charter commission. Here are a few examples:

- a law requires periodic evaluation of the charter
- a small (but growing) city becomes increasingly complex but is operating with an out-of-date charter that is simply not working any more
- residents desire a more representative body of elected officials
- a vocal group wants to change the existing form of government
- a newly-incorporated local government needs to draft its first charter
- widespread community discontent regarding a string of governmental policy or project debacles triggers an interest in making changes to the charter
- residents desire greater governmental accountability

- a newly-elected slate of public officials calls for change - including charter revisions
- poor governmental performance is linked to overly-restrictive charter provisions
- city officials realize that the charter conflicts with state law

Whatever has occurred in your local government to trigger an examination of its charter, it is critical that the reasons behind the effort be understood and carefully scrutinized. Initiating a process to change a local government charter should never be a “knee-jerk” reaction to a recent problem. If it is entered into by choice, a charter review should be undertaken only after serious consideration.

Why Review the Charter?

Most local governments are fortunate to have charters that were written by civic-minded and well-meaning individuals who engaged in serious deliberation and thoughtful discussions as they made charter-related decisions. There are reasons behind why the charter of each community was written as it was. However, new generations come into leadership positions with new ideas. Leaders of each generation need to learn by precept and experience what the previous ones had come to accept as true through experiences of their own. And, as is so common in local governments, dissenters emerge from time to time and criticize the “outdated” charter document created in the distant past and question how it could be relevant and useful today. Reviewing the charter does not necessarily mean changing the charter if it is sound in design. In some cases, the charter review can be viewed as a routine “checkup” that may find the patient is healthy.

Many local governments have made changes to their charters since they were first adopted. Periodic general review can be a useful exercise. Some charters have added multiple revisions over time without a comprehensive review while other revisions resulted from earlier efforts to carefully reform the charter. While updating and changing a charter can be beneficial, it should only be done for the right reasons within the proper context. A charter commission carries a weighty burden in exercising its judgment to determine which features should change and which should be retained.

So, why are charter changes necessary? The easy answer is “because things change,” or “because we want to see real change in our local government.” But the easy answer is not always the right answer. Changing a charter is not a cure-all. Many local governments are able to turn things around and make sweeping organizational changes without changing their charters. Examples abound of newly-elected public officials, innovative city managers, and creative department heads making considerable positive impact on the communities they serve without modifying their respective city charters.

On the other hand, demographics, economics, and dynamics of cities, townships, and counties change over time. And, that may mean the values of the community have changed as well. For example, because of the unique characteristics of a growing number of residents living in different geographic pockets of the city, the public interest might be better served with council members elected by districts instead of at-large. Vocal representatives from the flourishing business community may join together to support the idea of adding a professional manager to the city administration.

Many consider the election of a fresh slate of public officials to be a solution to poor government performance, waste, or corruption. This kind of wholesale change certainly can and has made a difference in many local governments. However, sometimes efforts by even the most seasoned and well-intentioned elected officials can be stalled or thwarted by an overly-restrictive charter. In some cases, only after charter

revisions are in place can public officials make significant strides to improve governmental operations, processes, or policy. Things change with the passage of time, and so should charters.

The process of writing a charter or drafting charter amendments is not an easy undertaking. This is by design. A charter provides stability and consistency to a local government. The charter writing process is a major task that has long-lasting impacts - not just for the local government, but also for its residents. Therefore, broad community involvement is needed. The process requires the commitment, time, and talents of citizens and governmental staff. Ultimately, voter approval is necessary for the proposed charter or charter changes to take effect. It is not a task that should be entered into lightly.

When to Consider Changing the Charter

Not every local government issue is a charter issue. Most problems governments face have nothing to do with the quality of the charter. Many concerns about the workings of local government can (and should) be handled other ways. There is a danger to making changes to a charter when those changes could be achieved another way. In as much as charter changes can bring about positive results, they can also produce overly cumbersome procedures, unjustifiable advantages for certain groups, and onerous restrictions on governmental leaders.

So, before a decision is made on whether or not to pursue a desired change through the charter, other possibilities should be considered first. The following questions are suggested to sort out how best to address the area(s) of concern:

- Can this problem be solved by the passage of an ordinance?
- Can this problem be addressed with an administrative measure (such as amending an existing departmental or city-wide administrative policy or procedure)?
- Does the mayor or city manager already have the authority to make changes that might address this problem?
- Should a solution to this problem be sought by getting new officials in office?
- Might state legislation address this problem more effectively than a change to the local charter?

If the answer to any of these questions is "yes," that alternative should probably be tried first. While many problems could be solved through a charter amendment, most problems can be addressed more efficiently other ways. Furthermore, many local government services and regulations are mandated by federal or state law. In other words, altering a municipal charter cannot eliminate or change policies or requirements established at higher levels.

What Charter Change Can and Can't Do

So what can charter change do? And, perhaps more importantly, what can it not do? Charter change CAN...

- alter a form of government so the new form is better aligned with the preferences of citizens
- restrict or increase options available to governmental leaders
- alter electoral representation
- clarify ambiguity or confusion caused by existing charter language
- redistribute powers among elected officials, appointed officials, and governing bodies as well as between city officials and citizens
- set the stage for governmental leaders to achieve desired changes
- convert elected governmental positions to appointed positions or vice versa

Charter change CAN'T...

- automatically increase the quality of governmental products and services
- eliminate political in-fighting and make elected officials achieve consensus (although governmental form can affect the likelihood of conflict)
- expand the scope of municipal powers in states without home rule
- jumpstart the local economy
- decrease local crime
- improve the school system
- stop a controversial public project
- change or eliminate state-mandated activities

A charter can easily become a tediously detailed document that hampers those in office as they work toward improving services, streamlining governmental functions, or reorganizing departments by severely limiting available options. While a certain level of control over governmental action is necessary and appropriate, balancing control with organizational and process flexibility and discretion should be the ultimate objective of any charter.

Does Our Problem have a Charter Solution?

Sometimes when a local government faces a difficult challenge, leaders consider conducting a charter review in an attempt to find a solution. In these cases, an objective and well-informed decision should be made that changing the charter is the best path to take. Some charters include a provision requiring a formal charter commission be appointed from time to time (every five or ten years, for example) to conduct a thorough review of the charter. In other cases, a charter review may be statutory - mandated by state law. This kind of routine examination may or may not involve an attempt to "fix" something that appears to be broken in the local government.

So, what kinds of challenges justify convening a charter commission? The following are a few issues faced by local governments that often warrant an examination of the charter.

A Charter-Created Problem: This kind of problem is one that originates in the charter. It, therefore, can only be addressed by a change to the charter. For example, a city with a charter that establishes a "rotating mayor" (in which the mayoral position rotates through council members every year) may determine that this system for selecting a mayor is no longer effective. Over time, it has become evident that while many competent individuals have served as mayor, recurring problems continue. It appears that the real problem has nothing to do with the actions or abilities of those who have served as mayor over the years. Instead, the problem appears to be the rotating mayor system established in the charter. To address this, the rotating

mayor system must be changed in the charter document.

Lack of Formal Power: Regardless of the home rule status of a state, all local governments are able to adopt a charter to establish basic principles for local governance. Local government powers cannot be assumed by adopting an ordinance, enacting state-enabling legislation, adopting a new administrative policy or procedure, or taking any other action emanating from the city council, county commission, the mayor, or the city manager. If the local government has not assumed the available state-specific powers through its charter, the city's authority will be limited unnecessarily. This challenge is faced by a recently-incorporated city functioning without a municipal charter. The city must adopt a charter that assumes all powers available to it so the city can exercise its legal authority and have formal control over all aspects of its operations.

Form of Government: Governmental structure matters. The way a local government is structured affects how decisions are made and how the everyday business of government is carried out. This is particularly true with the form of government. When the ideas held by citizens about how the government functions are not in line with the city's particular form of government, a local government may consider changing its structure. This kind of structural problem requires a charter solution.

A word of warning should be mentioned here. A form of government should never be changed in response to the desire, action, or inaction of a particular *person, for example a mayor or city manager*. Changing a form of government does not change a person's leadership style, personality, management approach, or preferred political strategies. For example, the current mayor in a council-manager city may argue that he or she needs more power to be an effective leader and changing to a mayor-council form will allow him or her to be more successful. This argument falls short for two reasons. First, future mayors may not be as effective as the current one. Changing a form of government is not a short-term solution. Once the form is changed to mayor-council, city government would depend heavily on the mayor's political and administrative leadership under the leadership of both effective mayors and ineffective mayors. Therefore, changing form of government should never be aimed at providing a person with more power. Second, mayors can exert substantial leadership within the council-manager form when they bring together a clear majority and set goals for the city manager. Finally, altering the city's form of government should never be used as a weapon to eliminate a person from the organization. If there is dissatisfaction with the person serving as city manager, for example, this person should be removed by the council rather than shifting from a council-manager to a mayor-council form and eliminating the position of city manager.

The question of whether change in form should be considered and, if so, which form should be chosen is a major issue in some charter reviews. A preliminary discussion of factors to consider in choosing form of government is presented as an appendix to this publication. For additional information, see *The Model City Charter* published by the National Civic League.

Once a general consensus exists that convening a charter *review commission* is the right approach or convening a commission is required by the charter, work may begin.

The Road Ahead

Residents of a community have the right and responsibility to shape their local government. While the level and extent of citizen participation may vary, a process of actively and effectively engaging citizens should be at the heart of any charter creation or revision.

One of the first steps in changing a local government's charter is identifying a group of individuals who may be willing to serve on a charter review commission. A charter review commission is a body authorized by law and exists for the sole *purpose of drafting and ultimately* submitting to the voters either a new charter or revisions to an existing charter.

Like a constitutional convention at the state or national level, a charter review commission closely examines the government and its present charter, studies the experience of other cities or counties under their respective charters and forms of government, determines the best principles of local government to build into proposed charter changes, and then drafts a new charter, charter amendments, or a presumably improved charter. Because the commission is typically composed of community residents who are not involved in daily governmental operations, the commission, by design, is able to be objective and impartial in its evaluation.

While the individuals appointed to this commission may be chosen various ways, there are some common features of their work that are consistent across the country. For instance, there is typically a time constraint placed on the commission to complete its work, the commission encourages and solicits citizen input, and the final commission recommendations are considered by voters at the polls.

The group of individuals chosen to serve on this commission is charged with a unique and important civic-minded task. An opportunity to serve one's community in this way typically comes once in a lifetime. Furthermore, if voters approve the changes, the commission's work will have lasting impact for many years to come.

Because each local government is unique in its strengths, community dynamics, power structures, and personalities, there is not one "right" way to conduct a charter review. This Guide is designed to be used in conjunction with the latest edition of *The Model City Charter* published by the National Civic League. The *Model City Charter*, which is judiciously updated from time to time to remain current and relevant, has proven extremely useful to many local governments that have written new a new charter or amended an existing charter. This Guide is intended to complement the *Model City Charter* by providing helpful suggestions and strategies aimed at facilitating what many consider a complex and overwhelming task: the process of charter review.

Chapter Two

11



The Charter Review

During the early 1900s, many cities faced serious challenges to effective governing. As a result, they became actively involved in charter reform. Since charter reform provides a way to redefine the basic rules of governmental operation, cities looked to their charters as a way of reducing corruption, enhancing local autonomy beyond what was granted by state governments, improving government efficiency and strengthening control over municipal finances. Over the twentieth century, more than eight cities in ten over 10,000 in population changed their form from the traditional weak mayor-council form or chose one of the new approaches as newly created cities.

Today's local governments also face challenges and often look to their charters for solutions. A well-functioning local government relies on established rules, regulations, practices, and precedent, and its charter is a large part of this. Sometimes a local "crisis" or series of public debacles bring into question some aspect of the charter. In other cases, a local government might be required to conduct a charter review every ten years, for example, to assess whether or not any changes should be considered. When a routine charter review is mandated, the review is necessary even if there is not a specific reason for a review. It is important to note that a charter review commission does not singlehandedly have the power to change the charter. Instead, this body has the ability to draft charter amendments or a new and presumably improved charter to be considered by local voters at the polls.

While a charter contains the enduring guiding principles for governmental operations, it also must be able to be adapted and changed. Although many good charters stand the test of time, they are documents crafted by flawed human beings who are unable to see into the future. Therefore, charters need to be revised and updated from time to time - in good times and in bad.

Charter review starts with the appointment of a commission made up of local residents who are tasked with methodically and objectively reviewing the existing charter and various aspects of local government operations. The scope of work assigned to charter commissions varies widely. As a result of the review, the group determines what (if any) changes should be considered for formal adoption. Because each community is different, there is not one "right" way to do this. Each charter review process will be unique to the community conducting it.

While writing or amending a charter requires the involvement of local residents, interestingly only a

handful of people have ever had any experience drafting a charter or changes to one. So, for most people involved in the process, it is their first and only experience with such a task. Without a doubt, this body is challenged with an uncommon and significant civic duty.

Commission Membership

Opportunities for direct citizen involvement in local government often garner a healthy amount of attention. While citizen involvement in committees, advisory groups, public hearings and the like is a significant and valuable part of local government operations, membership on a charter commission offers an uncommon opportunity for public service to one's community. Participation in the charter process is citizen involvement at a higher level and with greater potential impact.

A charter commission is a body authorized by law and established for the single purpose of drafting and submitting to the voters a newly created local government charter or revisions to an existing charter. The appointment of this group of individuals, typically between 15-20 registered voters, is often governed by laws and regulations that specifically deal with charter creation and revision. For example, in some cases the commission members might be required to be appointed by the mayor. In other cases, it may be the council that appoints the members. In still other situations, these individuals are elected by the voters. In any case, this independent commission of citizens is empowered to organize its review within the assigned scope and establish its schedule in order to facilitate its study of the charter and certain aspects of the government.

Given the importance of the commission's task, the membership of the charter commission is worthy of careful consideration. Individuals chosen to serve on the commission have a special opportunity for local statesmanship. If voters ultimately approve the work of the commission, the efforts of this group will have lasting impact on the future of the community and the local government. Therefore, selection of the individuals to serve in the charter process is a crucial decision.

All participants should be eager to work hard and willing to share their talents and expertise. It is important to understand that participants bring with them unique value systems, biases, differing opinions on what "good government" is, good and bad life experiences living in different communities, and (in some cases) personal agendas. As a result, deeply-held beliefs and viewpoints set the stage for complex committee dynamics, passionate discussions, and heated debates.

At the heart of this process is the active and focused engagement of a diverse and representative group of community members. Diversity is important for several reasons. The involvement of diverse groups and perspectives will not only contribute to a better final product, but also lend credibility to the validity of the final outcome. Therefore, no group should be left out. All segments of the community should be represented and no one should be excluded based on race, creed, color, ethnicity, national origin, religion, sex, sexual orientation, gender expression, age, height, weight, disability status, veteran status, military obligations or marital status.

When the commission is composed of community residents who are not involved in day-to-day governmental operations, the commission is able to be detached, objective and impartial. The most effective charter commissions are not dominated by lawyers, scholars, and accountants, but made up of civic-minded, intelligent lay people with a common-sense approach to things. The members should a) be in touch with the perspectives present in the community; b) command respect from local residents; and c) bolster the confidence of citizens in the process and the work of the commission.

Special mention should be made about the role of local elected officials. While in many cases the mayor and/or council plays a role in the appointment of commission members, the involvement of elected officials should end at that point. The charter process functions best when it is rooted in citizen involvement rather than one influenced (intentionally or unintentionally) by political officials directly serving as members. In some cases, the commission's recommendations go back to the council, which has the authority to decide whether the proposal will go to the people for a vote or may determine the final language of proposals. Still, the commission should do its work independently and give the council and the voters its best thinking about charter change.

Key Commission Players

The Chairperson. The chairperson of the commission will have a vital role to play. Because commission members are respected and intelligent individuals in their own right, it follows that they should be led by someone who is widely regarded as a person of integrity and good judgment who is politically neutral, accomplished, and widely-respected. The ability to collaborate is also valuable. This individual might be a former mayor or other well-known civic-minded individual who is level-headed and has a good sense of the work of a charter commission.

A number of real advantages come from the city council naming a chairperson and commission members simultaneously. However, if the council does not choose a chairperson, it is up to the commission to do so. Oftentimes a commission takes up the subject at its first meeting without much thought. Due to the significance of this position, the selection of the person to head the commission should not be taken lightly. The most successful charter commissions are led by a well-chosen chairperson. Unfortunately, instead of a thoughtful and deliberative decision, many times the selection of the chair is made quickly and relegated to a random selection from among those willing to be considered.

So, what makes for a good commission chair? A good chair is skilled at conducting well-run meetings. But there is much more to being a successful chair of a charter commission. A good chairperson has a sincere passion for the work of the commission and is able to translate that passion to its members. A good chair motivates commission members and speaks personal words of support and encouragement when needed. A good chairperson connects ideas, challenges opinions, helps define problems, and ultimately assists the group in reaching consensus on the issues that must be addressed.

These qualities are found when the chairperson uses a participatory style over an autocratic one to encourage active involvement among the members. This kind of chair acts more as a facilitator than as the local expert with all the answers. The chair leads the meetings, focuses the work of the commission, and keeps the process organized and on-track. The chair does not give up his or her right to participate in shaping the decisions of the commission but participates in a fair way. For example, the chair does not use the position to give advantage to some members nor to discourage members who hold different views. Further, the fair chairperson does not forcefully express his or her views in order to discourage others from expressing their opinions.

It is a lot to ask for the chairperson to singlehandedly address the myriad of issues that may arise during commission deliberations. Ideally, the commission chair will have the ability to call upon competent advisors to assist when needed. A discussion of two such advisors follows.

A Resource Person. The intensity and scope of the work of a charter commission make it ripe for conflict. The politically-charged task for which this body is responsible can easily result in communication breakdowns and gridlock. For this reason, many chairs have found it valuable to have a substantive resource person, consultant, or other expert sit alongside the chairperson and serve as a “go-to” person when a complex or substantive question arises. This person may also make early presentations to the commission on form of government alternatives and on other key issues as they arise. This person is not a member of the commission and does not have a vote.

A resource person might be educated in public affairs, political science, or public administration with experience in charter writing, such as a university professor or a senior staff member at an institute of government. In other cases, this person may be a consultant with a favorable record of involvement with charter commissions. If a charter commission does not have the luxury of engaging a paid resource person, a “pro bono” volunteer from a university or governmental institute with charter experience may be an option to consider. Regardless, an outside resource person is often an extremely useful addition to the commission as a source of technical guidance, suggestions, and advice. The key is that this person *has had experience with charter commissions* and is willing to bring that experience to the commission.

A Legal Expert. Every charter commission should have access to sound legal counsel. However, it is important to note that the study of law is by no means a study of local government, politics, and public administration. And, not just any lawyer can provide the information the commission will need.

For charter writers, it is highly important to be sensitive to the state-specific legal context in which the resulting charter must operate. A legal advisor can be invaluable in helping the group avoid potential conflicts with state provisions. Sometimes specific charter provisions must be included to allow a local government to take advantage of or to escape from laws established at the state level.

City or county attorneys are of particular value to the commission because they are familiar with the existing charter, the legal problems the local government may have had with it, and the applicable state laws. Furthermore, laws that govern the county, school districts, and other units may come into play. The detailed and sometimes complex arrangements that exist among a local government and its public sector components, quasi-governmental entities, and associations underscore the value of a knowledgeable, state-specific legal advisor who can address questions that arise.

However, not all legal experts are created equal when it comes to charter commissions. If the city attorney has experience drafting charters or charter revisions, that individual may be the preferable choice to serve as the commission’s legal expert because this individual will be affordable and responsive. However, if the city attorney does not have this kind of experience, the commission needs the ability to hire outside legal counsel with state-specific experience drafting new or revised charters.

If an outside attorney is hired, the city’s full-time attorney should still be involved in the process by providing testimony to the commission and reviewing and commenting on the final draft document. After all, long after the commission has dissolved, the city attorney will be the one to defend the charter if and when it is attacked. Therefore, ongoing involvement of the city’s own legal advisor is a critical part of the process.

Finally, a commission should not refrain from claiming power or including a provision in the charter just because there is doubt about how it will stand up in court. The powers of many local governments have

been unduly limited not by the laws or courts of the state but by the timidity of the charter commission or the commission's legal counsel.

Funding

As a conscientious public body, the commission should make every attempt to minimize its financial obligations. However, every charter commission must have some money available to cover its necessary expenses.

As often as possible, the commission should use public buildings for its meetings. It is likely that the local government will make its office staff and equipment available to the commission so that secretarial services, stationery, copying, and postage can be handled in-house. Even more technical matters such as website updates and bulk email messages may be completed by local government staff. Instead of paying outside experts for their time, local government staff members (such as the finance director, for example) should be considered because they typically prove to be informative advisors willing to share their expertise with the commission at no cost.

While visits to other communities by commission members may occasionally be desirable, junkets at public expense are not appropriate. A better alternative is to invite speakers from outside the community to speak to the group during its meetings.

No commission member should be paid a salary or honorarium. Furthermore, commission members should never assume that they will be reimbursed for expenses without first consulting the appropriate government staff member.

If a significant cost is identified and deemed necessary or appropriate, the commission should make a formal request to the local authorities for the needed funds. Only necessary expenses should be reimbursed - such as consulting fees or outside technical assistance. Accounts of all receipts and all expenditures should be carefully maintained.

Public Outreach

The best charter is of little value if voters do not approve it. For this reason, a concerted effort to win public understanding and acceptance should begin the day the charter commission is selected and continue until the day the vote is taken on the proposed charter or amendments. This may mean a small work group is charged with this task.

Many former charter commission members would likely agree that only half of their job was charter writing. The other half was sound public outreach. Many well-written charters have been defeated at the polls due to poor public relations and a lackluster voter education program.

Positive publicity and voter education can be achieved a number of ways. The most common and long-standing approach is through public hearings. Unfortunately, public hearings are notoriously poorly attended and are considered by many to be ineffective. Fortunately, there are a number of other ways to gather public input and share information. Neighborhood-based meetings and specially designed "dialogue" sessions can be organized. At the latter, participants discuss the qualities they would like to see promoted in their government and their community rather than suggesting specific charter provisions.

Local government newsletters, speakers' bureaus (including commission members), brochures, local magazines and newspaper articles, television and radio ads, public access television channels, and updates sent via email are other ways citizens can be informed of the process and invited to participate.

The local government website should include the most up-to-date information about commission meeting times, agendas, and minutes. Also through this site, residents should be able to sign up for charter-related email alerts, press releases, and meeting reminders. Another useful idea is to make available well-written speeches, white papers, PowerPoint presentations, and talking points addressing the commission's work and related efforts. An online forum can be set up to collect views about the charter revision. In sum, extensive information about commission meetings should be easily accessible to the community, ideally published electronically and available online.

It is not unusual for the work of charter commissions to pique the attention of schools and civic groups. Such an exercise in democracy is worthy of attention and serves as an excellent real-life case study of government in action. For example, junior charter commissions may be used as a learning tool for students. Of more immediate importance is that the attention of students will often indirectly invite the attention of their parents who, of course, are part of the voting public who will be asked to support the new charter at the polls. Therefore, the commission should willingly work with schools and civic groups to plan activities or projects related to the charter commission's work.

Residents deserve the fullest opportunity to be informed and to participate in the process. To this end, charter commission members should encourage the involvement and attention of a variety of community groups. Local residents can never have too much information concerning the vital charter-related issues being discussed in commission meetings. That said, the information released to the public must be easily understood and clearly organized to avoid confusion often caused by information overload.

Public involvement has many benefits. One important benefit of an aggressive public outreach and education process is that it often results in a constructive and thorough review of the commission's work which, if considered honestly, will improve the final product. Furthermore, when residents are afforded the opportunity to offer their opinions and suggestions in an environment in which ideas and input are taken seriously, residents are more likely to support the commission's recommendations at the polls.

Therefore, it is not enough to rely on just a few avenues to effectively educate and update the citizenry on the commission's work. Publicity and education efforts must be multi-pronged. In all cases, the message should be consistent: a charter commission is active; its members are hard at work; it is considering complex and substantive issues; citizens are encouraged to get involved and offer their ideas and opinions; and once the commission has completed its work, citizens will decide in an election whether or not to adopt the proposed charter or charter amendments. In sum, the message to the broader community should be that the commission is working in good faith to make the best decisions possible about what is best for the community and its local government.

While communicating with the public is important, individual commission members should be wary of making any statements that are inconsistent with the overall public message endorsed by the whole commission. This includes taking a public stand prematurely on controversial matters which can undermine the progress of the group. When in the public eye, it is important for commission members to guard against untimely public comment on issues on which the commission might change its mind in light of further study. Oftentimes, the best answer to some questions is, "We are still studying the question."

Every local political situation is unique to a certain extent. Without a doubt, local leaders best understand local dynamics and can come up with the most effective public education strategies aimed at gaining the support of a majority of citizens. These efforts should become more intense during the final campaign. A good public outreach and voter education campaign allows the commission to keep in touch with what the public is thinking and saying about the commission's work. This is important throughout the process, but is of particular importance as the election draws near.

The "Charge"

The task of a charter commission is to prepare and present to the voters the most straightforward, clear, and forward-looking charter it can. Many times the specific "charge" for the commission's work comes from the city council. In particular, a commission may be authorized and empowered to do the following:

1. Examine the existing local government charter.
2. Conduct a comprehensive or limited study of various aspects of the local government.
3. Examine the procedures and interrelations of the different parts of the government to determine the role the charter plays in the current state of affairs.
4. Research the experiences of other cities or counties under their respective charters and forms of government to discover better governmental arrangements and practices.
5. Determine from independent study and investigation the principles of local government that should be built into the proposed charter or proposed charter changes.
6. Draft the proposed charter or charter amendments in a clear, logical, and consistent way.
7. Conduct its affairs in such a manner as to win the respect of local residents.
8. Educate citizens about the process and the progress of the commission and encourage adoption of the charter or its amendments.

Sometimes a particular area of the charter is singled out for review. For example, a charter commission may be instructed to examine whether the mayor's term should stay the same or be lengthened, if a city administrator should be added to the mayor-council structure, or if the number of council members should be changed. Charter commissions are convened for a host of different reasons from the mundane (such as a legal requirement to do so every ten years) to the politically charged (such as in reaction to municipal scandal and corruption). Identifying the factors that serve as the impetus for charter review is extremely helpful to organizing the early work of the commission and in setting the right tone for productive meetings.

In this vein, many questions may cross the minds of commission members:

- What are the expectations for the commission?
- To whom is the commission accountable?
- Is there a crisis in local government that gives clear purpose to the commission's work? If so, how might that situation influence the commission's work? Is the crisis related to conditions that can be affected by the charter?
- Were any members of the commission "instructed" by someone (such as the mayor or council) to promote a certain position or advocate specific changes to the charter?
- Will the commission's recommendations go directly to the voters or to the city council first for review and possible revision?

Once these kinds of issues are addressed, the real work can begin. One suggestion is to hold a kick-off meeting early in the process to bring everyone together and work through any concerns such as those listed above.

Getting Started

Holding an initial kick-off meeting with the commission and local elected officials has a dual purpose. First, it officially conveys the reasons behind creation of the commission and offers a sense of purpose. Second, it provides an opportunity to address lingering concerns or questions and to dispel any uncertainty or doubt in the minds of commission members, local residents, and the media.

A useful exercise for the commission members themselves soon after the kick-off session is to create a "shared vision of government" - a statement aimed at drawing members together towards a shared purpose, motivating them when times get tough, and giving their work meaning. This vision should not specify particular charter provisions (such as an election method or form of government), but instead should describe the qualities of the government the community would like to have in the future. This is not a simple assignment. Creating such a statement requires an examination of the values held by the community and the unique characteristics of the population. It is an exercise in finding unity in the midst of diversity.

While the individuals serving on the commission have different backgrounds, priorities, and beliefs, their shared aspirations for good government will be a uniting force. Discussing the diverse perspectives represented on the commission will be time-consuming. Supportively listening to the ideas of others requires patience. However, the tangible achievement of common ground evidenced by a written shared vision statement can be a significant early milestone.

Another idea for the early meetings of the commission is to invite one or more members of previous charter review commissions to speak to the group. These individuals may be local residents who have participated in past charter efforts or individuals from other communities that have recently gone through the process. Those with charter-writing experience will likely have some "words of wisdom" to share with the group that can prepare and inspire them to face what lies ahead.

The commission works together for only a limited period of time (generally no longer than 12 to 18 months) since there is typically a time constraint placed on the group to complete its work. Working with a strict time constraint places a premium on the efficient use of time. For this reason, many charter commissions find it helpful to establish a calendar at an early meeting. This calendar should set forth the work of the commission, meeting times, and important dates such as elections and other deadlines that are fixed and cannot be changed. It is not unusual for city councils to specify - or at least have in mind - when they want to hold the charter election. Other times there are legal restrictions on when an election may be held. For example, in Texas, cities have only two dates in a calendar year in which an election can be held. Knowing these kinds of deadlines up front is a key step to the success of any charter commission.

The Commission at Work

The work of charter writing is not easy. The issues are complex. While writing or amending a charter is challenging, it is not impossible. Frankly, the charter process often stirs passion and controversy. It can be messy, noisy, and complicated.

Throughout the process, some members may feel that progress is not coming fast enough. Some will want to slow the process to allow for further study or public input. Others may want to move ahead without additional public comment. Some may become frustrated. Some may become angry. The challenge for the commission is to remain focused on the work at hand in spite of these obstacles.

As uncomfortable and contentious as commission discussions may become, the best commission members stay focused on what they are asked to do. They are not afraid of what is hard, even when success is uncertain. The greater the success of the commission in writing a charter that advances the public welfare of the community, the more honor and satisfaction will come to its members.

Typically, a commission holds many meetings and public hearings. Meetings should be held in a convenient and well-known location that encourages public involvement. Meeting attendance is critical and should be required of members. Because the ongoing involvement of the membership is so important to the process, members who are not able to attend meetings consistently should be replaced. For example, it is not uncommon for members who miss three consecutive meetings to be removed and replaced.

Many charter commissions reach out to the community by holding certain meetings outside the confines of city hall or the commission chambers. One strategy to encourage participation is to hold some meetings in various public venues throughout the community - essentially moving select meetings to the "backyards" of local residents.

During meetings, the commission hears testimony from public officials, staff, representatives of community organizations, and members of the public. It receives reports on special topics, listens to experts make presentations on various issues, and debates important policy matters and discusses draft reports on special topics. Often, a city staff member or administrator serves as a non-voting liaison and provides some level of staff or clerical assistance.

It is possible and desirable for meetings to be both businesslike and informal at the same time. Meetings should be planned and organized, but not rushed. The chair should see that members stick to the business at hand while retaining an atmosphere of friendly informality. Meeting agendas are beneficial because they help focus the group's discussion. Everyone should be heard with time allowed for focused deliberation.

Upon completion of its draft, the group should come back together to review all of the proposed changes. A few meetings should be set aside for this. Additional clarification or resolution may be needed to address any charter revision recommendations that are unclear or overlapping. Arriving at the proper charter language is a key final step because no matter how good the recommendations may be, they cannot simply be compiled. Legal edits and other modifications aimed at providing continuity and harmony will be required at this point. Therefore, if a substantive resource person was involved in the charter process, soliciting his or her comments and suggestions on the draft is a worthwhile step. If the local government did not engage such a person, the commission should attempt to get "pro bono" feedback and suggestions from a university or governmental institute resource person. The city attorney should also be called upon to provide comments.

A good practice is to publish and circulate an official yet tentative charter draft and invite public scrutiny. Inviting reactions to the draft serves a number of purposes. First, it affords another opportunity for genuine feedback from citizens. Second, it informs the voters that the commission is, for the most part, done with its drafting work. Third, it allows the commission to make adjustments prior to the election which may

strengthen the charter and improve its chances of success. Fourth, it helps to clear away doubts and rumors about what is and is not contained in the recommendations. Finally, it reminds residents that the final decision lies in their hands in the upcoming election.

At the end of its work, the commission should prepare and issue a "Report to the Voters" that serves as an executive summary telling the community what principles the commission followed and explaining the main features and merits of the proposed charter or charter amendments. Circulating such a document allows the commission to share candidly with the voters what benefits are expected from the proposed charter and the rationale behind various elements. If appropriate, an organizational chart illustrating the proposed governmental structure can often be helpful. If used, this Report should be released with the draft charter serving as a guide for reporters and editors as to what the commission considers the most important features of the recommendations. It is important that the first impression of the commission's work be an accurate impression.

Should We Draft a Completely New Charter or Amend the Old Charter?

One question that commonly arises during the work of charter revision is whether to set aside the existing charter and draft a completely new charter - or simply amend the current version. The appropriate approach depends on a number of factors including the quality of the existing charter and the extent and characteristics of the contemplated changes. If the charter requires a number of fundamental changes (such as changing the form of government), it is often better to submit the changes as a clean, new draft of a complete charter.

Charters have so many interlocking provisions that it is often difficult to produce a consistent, coherent result by submitting a series of separate amendments. Many local governments have been frustrated when attempts to produce a basic change with patchwork amendments have resulted in a disjointed, confusing document. If the entire charter is re-written, it has the additional benefit of allowing the commission to "clean-up" minor defects in the original document which, while needed, did not on their own warrant the convening of a charter commission.

One of the common arguments in support of charter amendments is that changing only certain parts of the charter is likely to encounter less opposition than presenting a completely new document to the voters. When voters are considering an entirely new document, opposition to one part of the charter might jeopardize public support of an otherwise acceptable charter. Such opposition is typically focused on just one or two sections. If this is a possibility, some states allow the commission to submit the charter to the voters with alternatives on the matter(s) in question. The burden, then, is on those who advocate the alternative option. They must then convince the voting public that their alternative position is better than the one recommended by the commission. In many cases where this approach has been taken, citizens supported the charter as a whole *and* approved the choice preferred by the commission. It should be noted that when submitting a proposition with alternatives, care should be taken to make sure that the alternatives do not result in conflicting provisions.

Dealing with Opposition

Opposition is often encountered with a good charter, so the commission should not be surprised or disheartened when it occurs. Strong opposition does not occur in all cases, however. Many charter reforms are strongly supported by local officials and members of civic-minded community organizations who know

from personal experience the need for improvements to the workings of the local government.

When they surface, opponents can and will come from very different places. Certain groups and individuals will be opposed to any departure from the status quo. Others will be opposed to changes because they do not go far enough. Elected officials often do not support changes to their offices, powers, duties, or salaries. It is not uncommon for leaders of political parties, influential community groups, or other factions with interests at stake to make their disapproval known.

It is important to understand the viewpoints and fears of such groups in order to win their support, or, if necessary, counteract their influence. Often the support of these individuals is lost because it is assumed they are unalterably opposed to charter change. However, sometimes a group may be won over by a meeting to discuss their concerns. Other times, a non-objectionable provision in the proposed charter could be added to allay their concerns and win their support.

While the commission should be sympathetic and open to listening to the demands and views of all local residents, it must take the high ground by appealing directly to those in opposition to support sound principles of government first and foremost. It cannot do this by appeasing each pressure group and yielding to its demands. Making weak compromises often results in an inferior document. The dignity, independence, and effectiveness of the commission will be destroyed if it gives in to the demands of special interest groups in ways harmful to the public welfare.

The important thing to remember when compromises are suggested is that the essential features of a charter must be in harmony. More than one charter has failed at the polls or (worse yet) in implementation due to compromise provisions that are incompatible with its basic pattern. If enough broad support exists for the effort and the draft document as a whole, this support will override objections to small matters that are raised.

Evidence is overwhelming that the vast majority of citizens in any community want "good government." That is, people desire a government that can be described as ethical, effective, and efficient. A useful byproduct of discussions about good government is that often the opposition comes to the realization that, while they won't agree with the majority on many things, common ground can be found when it comes to the underlying principles of good government.

The commission's constant message of working for a better government coupled with a sincere interest in involving all citizens in a transparent and open process will do much to counteract the negative pressures of special interest groups that may surface in opposition to the work of the commission.

The Election

The process for how and when the charter or charter amendments are considered by voters varies greatly by community. Upon completion of its work, the commission forwards its final recommendations to either the elected officials for their consideration or directly to the voters. Ultimately, the decision is in the hands of the local residents.

In many cases, recommendations of the charter commission are added to a scheduled upcoming election. In states that are covered by the Voting Rights Act, the Justice Department typically has to approve a charter election. In other cases, charter recommendations are a stand-alone issue and the timing of the election can

be determined by the local government. If the charter commission is able to weigh in on the timing of the election, it should carefully consider the matter in light of the political calendar, weather, holidays, and other local community dynamics in an attempt to time the election to encourage high voter turnout.

Regardless of the timing of the election, appropriate and sufficient time should be allowed between the completion of the commission's work and the election to allow for ample public comment and feedback. Voter approval of the charter recommendations will be the test of the vision, courage, statesmanship, and public outreach exercised by the commission's members.

Conclusion

All charter reviews are different. Most commissions enjoy substantial discretion in what they can recommend to address the areas within their purview - from sweeping changes to no changes at all. For example, following an evaluation of the government and its charter, a commission may recommend leaving the current charter basically intact. On the other hand, a group may recommend a far-reaching change such as changing the city's form of government. In the end, the best commission recommendations are those based on transparency, diversity, and widespread public involvement.

Dos and Don'ts for Commission Members

DO be a team player. You should be intent on making significant improvements. So, share your thoughts and ideas and respectfully listen to the comments of others. Be wholeheartedly engaged and committed to the process while respecting the time constraints imposed on the commission.

DO be open to finding the form of government that best fits the preferences of local residents. If the commission is considering form of government in its deliberations, each member should put any preconceived ideas aside in order to evaluate the options objectively based on the fundamental features of each and the experiences of other cities.

DO be willing to compromise and change your mind in light of evidence. Let go of the belief that if you lose, I win. That said, compromising does not mean giving up your good ideas and accepting inferior ones advocated by others. Taking the easy way is not the best way. Halfway measures have little usefulness or appeal. Statesmanlike compromise is a group process of give and take in which the most practical ideas rise to the top, are blended together, and made into a workable system. The end result may not please you in all respects, but it will represent legitimate consensus and, likely, substantial improvement.

DO keep in mind that the voters are the final decisionmakers on whether to accept or reject the proposed changes. Be willing to play a part in educating the electorate and publicizing the work of the commission. An informed citizenry will make the best decision on election day. So, welcome the involvement of many people in the discussion. Be sensitive and responsive to what you hear from them. Know that ongoing community support for the work of the commission keeps naysayers in check and ultimately leads to good results when the votes are counted.

DO be cautious of making premature public statements on charter-related matters.

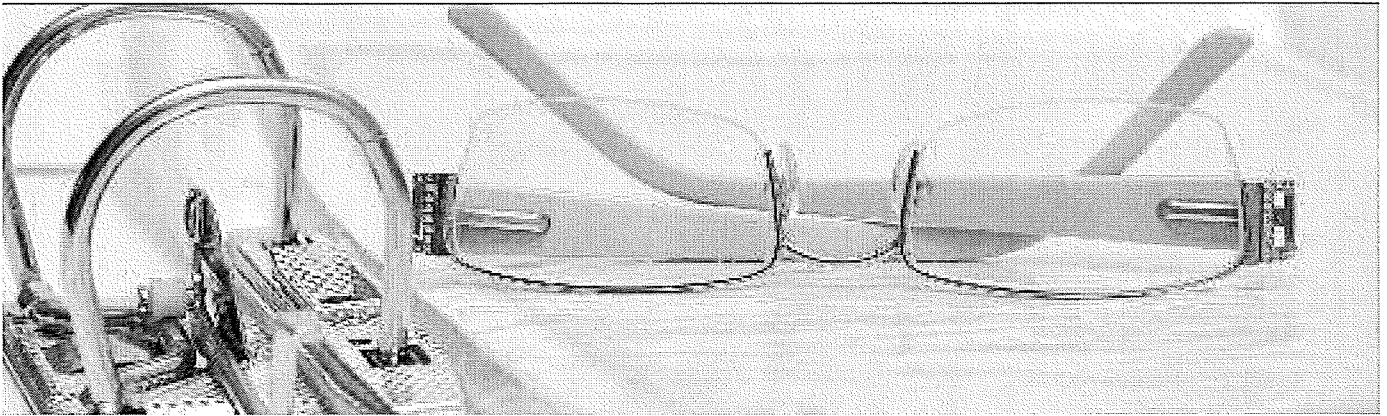
DON'T refuse to support a good idea for improvement to the charter because you feel it is not good enough. The "perfectionist" - the person who insists on perfection or nothing - will likely be at best a distraction and at worst a serious roadblock impeding the important work at hand.

DON'T use commission membership as a springboard for your future political career. You were chosen to be involved to serve the citizens, not your ambitions. Any attempt to use your involvement as a stepping stone toward a career in politics will not be lost on other members of the commission who will likely discount your opinions as political posturing. Commit to putting the public welfare ahead of your own career aspirations. Focus your attention on the work of the commission. If your work on the commission triggers in you a genuine desire to seek political office or if a citizen movement drafts you for office, so be it. In either case, you will get more respect as a political candidate when you make that decision made after your involvement on the commission rather than before.

DON'T try to solve all the ills that might plague the local government by pushing for overly restrictive prohibitions in the charter. Power is always subject to possible abuse in the hands of the wrong people. The challenge is to establish a system that will enable local residents to hold their public officials responsible for the way they use power. There is no gain in setting up a new government and then hamstringing it by denying it the flexibility and power essential to any effective government.

DON'T allow the commission to surrender sound principles of good government to the stubborn opposition.

Chapter Three



The most practical way of keeping a charter to moderate bulk is to restrain the tendency common among charter commissions of trying to solve all municipal problems right in the charter. This is not the proper function of a charter, which is rather to establish a framework within which the city government, representing the people, can solve its problems as they arise.

— Thomas H. Reed, *Revising a City Charter*

The Charter Document

What Qualities Make a Good Charter?

A charter is not only used by attorneys. It is used by a cross-section of the community - elected officials, government employees, and everyday citizens. Therefore, the language used and writing style employed should be user-friendly and easily understood by an average citizen.

The better a charter is, the easier it will be for public leaders and officials to operate a proactive and successful local government. A good charter functions as a harmonizing, integrating, and controlling document. Therefore, the qualities of a good charter are worthy of consideration. Good local government charters are (1) straightforward; (2) consistent; (3) thorough, but not exhaustive; (4) flexible; and (5) focused on the fundamentals.

1. Straightforward. Simple and straightforward language facilitates comprehension. A good charter is easily understood by laymen as well as lawyers. The reality is that elected officials, government professionals, community leaders, and average citizens - none of which are legal experts - will be the main users because *they* are the ones that will implement the charter and refer to it when a question arises. Good charters are understood without a law dictionary. That said, including certain clauses or phrases that have been accepted by the courts as having a precise meaning may be necessary to ensure the charter will hold up in

the courts. Furthermore, much care should be taken in choosing the "right" words. The choice between words such as "shall" and "may" is an example of how exact wording is very important.

2. Consistent. Consistency throughout a charter is important on many levels. The writing style, verbiage, and content should be considered when looking at consistency. Comparable provisions should be handled similarly. Charter provisions of substance that do not harmonize with each other may lead to disunity, unhealthy bickering, and government paralysis. Inconsistencies not only breed confusion for the local government, but also can trigger future litigation.

In addition, a charter should be free of any internal structural contradictions or inconsistencies. For this reason, once a basic form of government is chosen, the charter commission should be wary of adding elements of other forms or eliminating features inherent to the chosen form. For example, the structure of the council-manager form can be completely undermined by provisions that permit the mayor to wield administrative powers exercised in the strong mayor form. While adopting widely accepted variations within a form can be workable, caution must be taken to avoid creating a system that is essentially at war with itself.

3. Thorough, but not Exhaustive. A good charter is comprehensive in terms of addressing all the necessities to facilitate an effective government. However, it should not attempt to be exhaustive by addressing every possible future scenario. There is a fine line in which the goal should be to include all necessary and essential components in a thorough, yet concise manner. Details should be avoided as much as possible. However, brevity at the expense of clarity can lead to confusion and litigation. A good rule of thumb is to express the intended meaning with the fewest and best words, whether it takes ten or one hundred. Generally, better charters are shorter charters. That said, the length is somewhat an outgrowth of state law and what broad areas need to be included. Detailed procedures should be established in administrative codes which are more easily updated and changed.

4. Flexible. Desires of citizens change over time. State and federal mandates on local governments are on the upswing. Residents demand new and expanded services. "Doing more with less" is a mantra often heard in local government. Those who make management and administration decisions are challenged every day to do just that. Officials must often use creativity and innovation to come up with new ways of doing things in order to free up time and resources to take on new programs or services. Providing local government leaders the flexibility to make changes is critical.

Good charters leave far more discretion to local government officials than charters of the distant past. Simply put, a charter should confer upon the elected officials and administrative staff broad powers to implement it and to promote the community's welfare. In the interest of local self-government, the charter must free the hands of decision-makers rather than tying them.

5. Focused on the Fundamentals. Good charters set forth general principles rather than legislative details. A charter's focus can be limited to the fundamentals when it is supplemented by an administrative (or municipal) code that addresses the details of the local government's administration and procedures. An administrative code is simply a collection of ordinances that sets forth the particulars of how the broad statements in the charter will be implemented on a daily basis. When procedural details are handled in the code or elsewhere (such as a policy and procedures handbook, for example), the charter can focus exclusively on the most fundamental provisions aimed at protecting the citizens, the form of government, and the relationships between the elected officials and the administration.

Essential Components of a Charter

Local governments were not created by U.S. Constitution. Local governments are, in fact, creatures of the states. Therefore, they are regulated by the states and have only the powers and functions given to them by their respective state constitutions and legislatures. So, to discuss local governments in general terms is virtually impossible due to the different legal and political contexts represented by different states across the country.

However, an important court decision that is widely accepted as governing relationships between cities and states is known as "Dillon's Rule." Iowa Supreme Court Chief Justice John Forrest Dillon's view was that because cities are creations of the state, they have only the powers *specifically given to them* by the state constitution or legislature or included in a state-approved charter. If there is ever a question or "gray area" regarding the power of a local government to do something, the answer is always "no." In other words, if it is unclear whether or not a local government has the authority to take some action, the authority has not been granted. Chief Justice Dillon's viewpoint had significant impact on cities in the late 1800s because other courts and legislatures embraced the same perspective.

Because a growing number of local governments wanted more flexibility and discretion in decisions about issues that impacted them, a movement to counteract Dillon's Rule emerged. The concept of "home rule" supports the rights of cities to govern themselves. Supporters of home rule defend the right of municipalities to manage their own affairs without state interference or involvement.

Today, most states have provisions in their state constitutions or other legal instruments that allow some form of municipal home rule, allowing citizens to exercise expansive decision making powers through their municipalities. Local governments that operate under home rule have broad powers that include control over things *that the state legislatures have not specifically granted and those things not specifically prohibited*. Essentially, home rule frees a local government in many ways to take actions that those without home rule are not able to take. For this reason, many cities adopt home rule charters. It is important to note that the degree of home rule afforded local governments varies greatly by state and is often limited to specific classes of cities and counties, for example.

Unfortunately, not all states have home rule. Local governments in these states still operate with restricted powers. To a large degree, the power of cities located in states without home rule is limited to the specific powers granted to them by their state legislatures. For example, a city located in a non-home rule state that encounters a situation in which a certain authority has not been specifically granted by the state is required to get special legislation passed at the state level before it can take that action. On the other hand, cities with home rule are freed from the necessity of running to the state legislature every time the public welfare requires something new to be done or an old function to be performed in a new way.

A city in a home rule state should boldly include in its charter broad discretion over the scope of services it provides in order to take full advantage of the power available under the home rule provisions of its respective state. Doing so will provide the opportunity to undertake new policies or new methods to address issues that are not currently anticipated. Is there any real danger in this approach? The answer is no. In spite of broad powers that a far-reaching home rule charter might afford a municipality, there are several safeguards that will keep a city from venturing too far into uncharted territory:

1. Most city councils are highly conservative about undertaking new services or enacting novel or inappropriate regulations that may put the reputation of the city at risk.
2. Typically, city budget dollars are tight. Risky ventures that may impact the city coffers too severely are generally derailed before they get too far.
3. Periodic elections, vocal residents, citizen surveys, governmental audits, and watchdog groups keep municipal decision makers mindful of the consequences of their actions.
4. Regardless of charter provisions, legal restrictions still exist to limit some municipal activities and powers. Limits have set by the state constitution, state legislature, and the courts. The U.S. Constitution prevents any city, as an agent of the state, from depriving any person of life, liberty, or property without due process. The court system exists to test any possible abuse.

Because particular laws and circumstances vary from place to place, the essential components of a charter will be discussed in general terms. Detailed and sometimes complex arrangements exist among a local government and its public sector components, quasi-governmental entities, and associations. Setting local peculiarities aside, the essential provisions found in most charters can be organized into a few specific categories: powers of the city; city council; city manager (if applicable); departments, offices, and agencies; financial management; elections; general provisions; charter amendment; transition and severability.

1. Powers of the City. A starting point for many local government charters is to address and define the scope of powers of the local government. Within the context of specific state law, a local government should claim all powers it may legally exercise through its charter. Again, a city in a home rule state should include a statement that allows for broad discretion in order to take full advantage of the power available under home rule provisions set forth at the state level.

When writing a new charter or making revisions to an existing one, commission members need to remember that the rules established by charters do not exist in a vacuum in organizing, empowering, and regulating local governments. There is a "hierarchy of laws," so to speak. And while a charter which establishes various legal regulations is a part of that hierarchy, so are other laws. The federal constitution, federal laws, federal administrative regulations, state constitutions, state laws are also a part of this legal context. For example, general state legislation and special legislation take precedence over charter provisions in regulating the activities of a local government. Even a city that operates under constitutional home rule may have no power to change some of the statutory provisions of law that bind it.

2. City Council. A challenge for every local government is to attract able, talented, and willing elected leaders that represent the community well. The charter plays a role in this. Because there is not a special formula to make sure this will happen, local communities are left to come up with their own solutions. Many argue that concentrating council authority in a small, representative governing body is desirable because smaller legislative bodies are more effective than large councils. In addition, every member is essential in a smaller council and can be closely monitored by citizens and the media.

This charter section discusses various details regarding elected officials, including the mayor and city clerk. The goal is to prescribe a way for elected officials to be chosen that allows for fair representation and fits with local values. Specifically, the charter should address issues of residency requirements and whether or

not public officials are to be elected by district or at-large. Other issues such as powers and duties, eligibility, terms of office (number of years, staggered vs. concurrent), term limits, compensation (salary), prohibitions, vacancies, and ordinances are also included here.

City council members. Regardless of form of government, the council is the decision making body that sets the direction of the local government through local policies. The expansive power of council members includes control over the local government's finances (budgets, revenues, expenditures, and borrowing), property, priorities, goals, and legislation. These individuals are elected by the citizens to represent them and be accountable to them. Much is expected of a city council member. Serving one's community in this way is a high calling.

Every charter establishes the process for selecting council members. Specifically stating how public officials are elected is essential. Alternate approaches are discussed later in this chapter. The unique characteristics of each local government's population come into play here. Representation is key. The charter should allow for the election of a council that is truly representative of the entire community. While no specific design can guarantee effective, impartial, and equitable elected representation, the charter sets the stage for this to happen.

Mayor. A community's history, traditions, preferences, and experiences factor into the decision of how to handle the selection of the mayor. The way the mayor is elected impacts the dynamics among all local elected officials and the overall effectiveness of the mayor's office, among other things. Therefore, careful consideration should be given to this procedure set forth in the charter. Two commonly used methods in council-manager cities are when (1) the council chooses a mayor from among its membership; and (2) the mayor is elected at-large. (All voters directly elect the mayor.) Both are workable alternatives, although the second is now the predominant practice. A mayor elected at-large increases the likelihood of effective mayoral leadership. Candidates for at-large mayoral positions have the opportunity to discuss citywide issues, and the broad base of community support needed to win the office provides the winner with a mandate for action.

3. City Manager. For those cities operating under the council-manager form of government, the Model City Charter recommends a section addressing the appointment, qualifications, compensation, removal, and powers and duties of the city manager. It is important to note that deviation from the tried and true ways of successfully operating a council-manager city should be avoided. If basic standards and protections of council-manager government are laid aside, the form can be seriously undermined setting up the city for failure.

If a CAO is a part of a mayor-council city, a section in the charter should be designated to address this person's appointment, qualifications, compensation, removal, and powers and duties. As a source of professional advice, the CAO may function as a unifying force between the mayor and council. As stated earlier, the National Civic League in its latest *Model City Charter* recommends the CAO be either jointly selected by the mayor and the council or nominated by the mayor and approved by the council. This method encourages the CAO to be responsive to both the mayor and the council since both were involved in the hiring decision.

4. Departments, Offices, and Agencies. Every local government requires administrative departments to provide basic public services to its residents. Departments of a typical city include finance, human resources, parks and recreation, public works, library, water, sanitation, and public safety. These departments are responsible for conducting the business of the city and providing public services day after day.

How these departments are organized and how they function in the administrative hierarchy differs across the country - and even over time within a single community. Administrative shifts and reorganizations occur for a host of different reasons including taking advantage of organizational efficiencies, department head strengths, and personnel changes. Departmental reorganizations can vastly improve the inner workings of a local government saving the government and taxpayers money and improving customer service.

While most local government charters address governmental administration and departments to some extent, a charter should not identify a list of specific departments. Instead, it should simply state that the governing body may establish any office, department, or agency it deems necessary to carry out the functions of the local government. Consequently, the city council could approve changes such as combining or eliminating departments without changing the charter. While simple and general language is suggested, the latest edition of the Model City Charter recommends special attention be paid in the charter to the critical areas of personnel, law, planning, and financial management.

A charter commission should resist temptations to specify lines of accountability, add layers of complexity, or build in any extraneous features of supposed "safeguards." An example would be an independently elected department head. These additions are pitfalls for both efficiency and popular control. Instead, administrative departments should report to either the city manager (in the council-manager form) or the mayor (in the mayor-council form). In this way, the charter does not insulate any governmental function from popular control. The mayor is responsible to the voters for the administration's actions and is held accountable at the next election. The manager is responsible at all times to city residents through their council members who have the ability to dismiss the manager at will. These are essential features of each form of government. If the charter builds in any deviation from them, such as council confirmation of appointments made by the city manager or specified tenure for the manager, it will certainly reduce the chances of satisfactory operation of the government administration and weaken accountability. This means there is no room in either form of government for independently elected administrative personnel. Independent election of such officers undermines administrative responsibility and adds to the burden on and confusion of voters.

Furthermore, departments should not be headed by or responsible to boards or commissions. Boards and commissions, more or less autonomous and more or less independent of city government, are found in municipalities across the country. While citizen boards and commissions play valuable advisory roles for local governments, they should not play a role in actual administration, supervision, or policy execution. Departmental functions should be under the responsibility of a single individual (department head) who is held responsible and is accountable to the manager or mayor. Possible exceptions include the city clerk and judge who are typically appointed by the council.

So, where is the appropriate place for details of the organizational departments and functions to be enumerated? The answer is in the administrative (or municipal) code. And, the charter should mandate the city council to adopt one. An administrative code, adopted and amended by the council, governs the activities of the administration and sets forth the organization of the departments. Placing the administrative details in the code rather than in the charter allows for modifications without the burdensome and time consuming process of amending the charter.

The administrative code is, of course, subordinate to the charter. Specifically, subjects that should be detailed in the code rather than in the charter include the following: administrative/departmental organiza-

tion; accounting, expenditures, payroll; auditing; purchasing; bonding and borrowing procedures; franchises; eminent domain; special assessments; licensing and license revocation; nuisance abatement and planning and zoning.

It should be noted that flexibility is crucial to build into the administrative code as well so that it is easily maintained. The code, and the charter for that matter, should be silent on internal departmental workings allowing the manager or mayor latitude to make changes administratively without being hindered by council-mandated requirements or restrictions.

In sum, local government leaders *should* have the ability to make necessary or desirable changes to the administrative side of the organization. A good deal of leeway allows for quick responses to changing requirements and environmental factors. A charter that addresses administration in a simple and straightforward way and incorporates an appropriate level of flexibility sets the stage for an effective, efficient, and responsive government administration.

5. Financial Management. A well-run financial system is a critical component of a well-run local government. Because strong financial guidelines help to ensure the fiscal health of a local government, this section of the charter focuses exclusively on the finance function of the local government, particularly the budget. Flexibility and sound budgetary practices should be emphasized. Topics addressed in this section include fiscal year, budget submission, budget message, budgetary council action, appropriation and revenue ordinances, budget amendments, budgetary administration and oversight, the capital program, independent auditing, and public availability of budget-related records. In an era of public sector financial scandals and problems, charter writers should pay particular attention to this section. Clearly articulating sound fiscal practices in the charter is a key step along the path of financial health. The requirements set forth in this section of the charter, such as the independent audit, serve as a robust layer of protection for the finances of any local government.

6. Elections. A goal of every charter should be to establish democratic control so the local government is responsive to the will of the people. State election laws typically apply to municipalities, leaving local governments little if any control in these matters. However, there are a few important areas still under the control of local governments.

This section of the charter outlines various facets of the election process including election methods; when elections are held; partisan vs. nonpartisan elections; council districts and adjusting those districts; and initiative, referendum, and recall.

Election methods. The two common ways to elect council members are by **district** or **at-large**. A **mixed system** is one in which district and at-large elections are combined in some way.

District: District elections require a city to be divided in a number of geographical areas or districts. Each council member is chosen by the residents of a different district of the city. Candidate residency in the district is typically required. District elections have noteworthy benefits:

- They allow a minority group, particularly one living in a specific geographic area, to have a fair chance of being represented on the council.

- A council member elected by residents of a particular geographic area likely feels beholden to those living in the district. This often translates into a heightened sensitivity by the elected official to the concerns of those living in his or her district.
- Running a district campaign is less expensive than running a city-wide campaign. Therefore, district elections reduce the financial barrier for those seeking office as compared to running city-wide. As a result, the diversity and number of candidates could be strengthened with district elections.

On the other hand, governing bodies made up of individuals elected by district can have a difficult time agreeing on community-wide goals since council members are predisposed to focus on the problems of their district rather than the priorities of the city as a whole.

At-Large: In at-large elections, all candidates are placed on a ballot to be considered by all voters. Candidates in at-large elections occasionally run for specified seats on the council. Those candidates with the highest number of votes are elected to office. Public officials elected at-large represent the entire community. The at-large election system has noteworthy benefits as well.

- Unlike those elected by district, council members elected at-large theoretically are able to objectively view the priorities of the community as a whole and make impartial decisions based on the needs of all residents rather than on the priorities and desires of just one limited geographic area.
- If all council members are elected at-large, they all ideally embrace a holistic view of the community leading to a more unified and objective viewpoint as compared to a council composed of individuals elected from different districts with very different priorities.
- Residents can voice their concerns to any of a number of council members rather than just one. This is because residents are represented by all council members.

One possible negative effect of at-large elections is that it can dilute the ethnic or racial minority vote making it difficult for these groups to elect a representative to the council. Furthermore, at-large elections could result in the election of a number of council members who live in the same area of the city. This can raise questions regarding the fair distribution of public resources and the governing body's sensitivity to geographic areas where no elected officials reside. To address this particular concern, an outgrowth of the at-large system is the inclusion of a district residency requirement. In this scenario, council members are elected at-large, but not more than one council member can live in each district.

Mixed System: Some cities have chosen to use a mixed system in which some council members are elected by district and some are elected at-large. Since the Justice Department approved this hybrid as a system that complies with the Voting Rights Act, it has gained popularity. Supporters of this system argue that it combines the best attributes of both district and at-large systems. For example, it facilitates a city-wide perspective offered by at-large elections while incorporating the "personal connection" between local government and voters promoted by

geographically-based district elections. Problems can arise here as well when council members elected at-large believe their seats are superior to district council seats. To help combat this, all council seats should have the same duties and terms of office.

It is important to note that courts have had a lot to say in this matter. The one man-one vote court decisions and the passage of the federal Voting Rights Act have heightened both awareness of and concern about how local elections are structured. Across the country, many municipalities have been forced by the Justice Department to abandon at-large elections and replace them with district elections to increase the chance that representatives from minority groups serve on city councils.

Timing of Elections. If allowed by state election laws, the timing of local elections should be established in the charter. When a local election is held has certain implications. For example, if a local election occurs at the same time as a state and national election, voter turnout is generally high leading to more widespread participation by the electorate in local races. When elections are held at a time separate from state and national elections, local issues and candidates are the main focus and can be considered separately and apart from the broader political context. Both alternatives have positive and negative impacts. The National Civic League does not take a stand on either option. Legal advice, local preferences, and community dynamics should dictate the proper approach prescribed in the charter.

Nonpartisan vs. Partisan Elections. Political parties so prevalent and significant at the federal and state levels have little significance at the local level. It is unfortunate when local elections are decided solely on the basis of political party affiliation because of the limited importance of parties in municipal governance and because of the seed of division it plants before a single vote is cast on the council. Party primaries that nominate candidates from each party typically favor candidates who appeal to the most loyal "base" of voters within each party grouping. Primary voters are less likely to select moderates in each party and very unlikely to choose independents who are not affiliated with either party.

While nonpartisan elections do not eliminate the involvement or influence of political parties in local races, it can minimize the emphasis on politics by shifting the focus from Democrat vs. Republican to that of local issues. When deciding among candidates on a ballot without party labels, voters typically elect a mix of Democrats, Republicans, and Independents who must all work together on the council. For very practical reasons, national party strife should be put aside at the local level to focus on the concerns of the community.

The National Civic League supports nonpartisan elections as evidenced in the latest edition of the *Model City Charter*, and it is not alone. A number of states have formally recognized the benefits of this approach and have passed legislation requiring nonpartisan elections at the municipal level. Elections that use ballots without party designation help place local politics on its own and free local governments from domination by national, state, or county party organizations. Local governments that willingly choose this approach recognize that it is an important part of genuine home rule.

Council Districts. If the election of local officials is based on the existence of districts, the establishment of districts and process for re-districting is included in the charter. This section holds particular significance for political representation since re-drawing district boundaries is generally required after each U.S. Census based on population changes. The process, timing, and method (by districting commission or city council) are included in this section - not the actual district boundaries.

Initiative, Referendum, and Recall. If permitted by the state, these three procedures of direct democratic control over government give citizens a degree of confidence in their ultimate control of the city. Therefore, a charter should not dictate a severely high threshold for signatures required to initiate these measures. The commission should be sensitive to setting the required number of signatures at a reasonable level. If the charter sets an impossible standard, it will render these measures worthless. While they can be considered a "last ditch effort" to push an action through the legislative system, initiative and referendum are viable alternatives that should be available to residents and included in a charter if legally possible. If the local government is well-managed, responsive, ethical, efficient, and effective, use of these measures is kept to a minimum. Recall gives voters a chance to remove an elected official from office who is not meeting his or her responsibilities. The permissible grounds for recall, however, should be limited to misconduct or failure to perform the duties of the office, not disagreement with a decision the council member has made.

7. General Provisions. Good government is rooted in public trust. To a large degree, this requires government, as far as possible, to be responsive, open, and transparent. In today's information age, transparency takes on a much different meaning than it did decades ago. Citizens have a high expectation for timely and accurate information to be available 24-7. Local governments should be proactive in making information available through all avenues possible. This moves beyond passing out copies of budget numbers at public meetings and issuing press releases on project updates. Citizens want and expect easy electronic access to considerable amounts of substantive public information.

The National Civic League's *Model City Charter* includes a section titled "general provisions" which covers conflicts of interest, ethics, basic prohibitions, and campaign finance. A charter that emphasizes transparency and openness in these areas encourages public trust in local government and those working in it. Again in these matters, the charter should present the process for dealing with these issues in light of specific state laws or, alternatively, mandate that a process be adopted by the governing body via ordinance.

8. Charter Amendment. A charter should stand the test of time. However, from time to time charter revisions are necessary. While amending a charter should be possible, it should not be too easy. This helps ensure that successful charter amendments are both appropriate and necessary. For states that allow cities to adopt their own procedures for charter amendment, this section sets forth that procedure. Included here are regulations for the proposal of the amendment(s) and the subsequent election when voters approve or disapprove the proposed changes. Some charters include a provision here that requires a review of the charter every five or ten years, for example. Many cities have found the practice of mandated charter reviews to be a useful exercise. Any charter changes should, of course, require popular approval at a referendum.

9. Transition and Severability. Many charters do not address the possibility of a governmental transition from one form of government to another. However, charters that speak to this issue can be extremely helpful to those leading such a change by protecting a city from litigation, avoiding general uncertainty and confusion, and clarifying general city-related questions. While care should be taken to tailor this section to state law, the *Model City Charter* offers recommendations on how to handle existing employees, departments, and agencies; how to address pending legal and administrative matters; and the schedule for various upcoming meetings, deadlines, and elections.

Conclusion

One of the most interesting things about local government charters is that each one is a distinct reflection of its community. Because a charter is the document that allows citizens to determine their own structure of government within state-prescribed legal limits, a charter is, in many ways, a manifestation of a particular community's values. Each charter is built on a specific set of political and administrative choices that are determined by the values held by local residents.

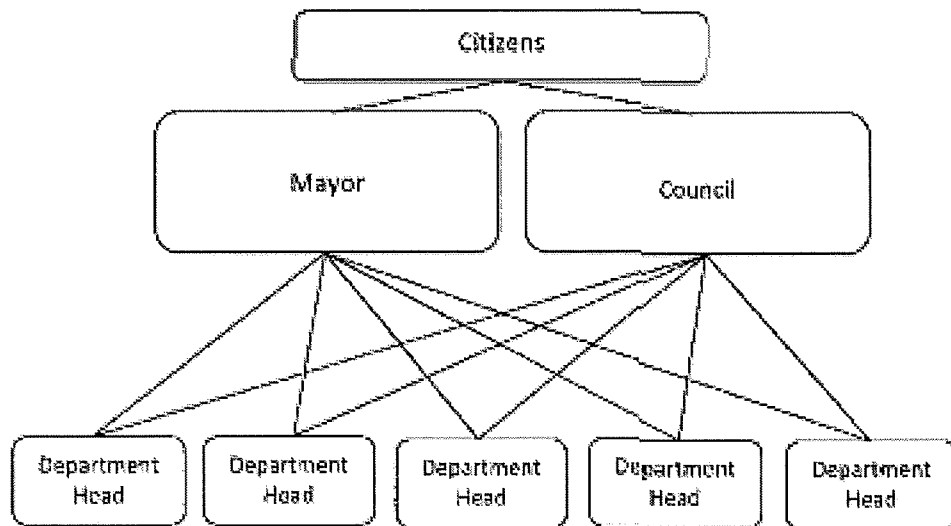
The final product of this process should be a charter built on widespread community involvement and, ultimately, widespread agreement on how the local government should function to best serve its residents. However, the charter process can result in even more. The call to action that the charter process requires can awaken a community's sensitivity to the importance and responsibility of civic involvement. If conducted successfully, the charter review process can result in a rebirth of widespread civic-mindedness - a quality that unfortunately is rarely seen in communities in a tangible way.

In the end, it is the community's values that build, alter, or reaffirm the foundation of its local government. In vibrant communities, citizens continually seek out new ways to improve how they govern themselves guided by the constitutional principles incorporated in their city charter. Ongoing refinement of the charter as a tool for effective governance is what the charter review process is all about.

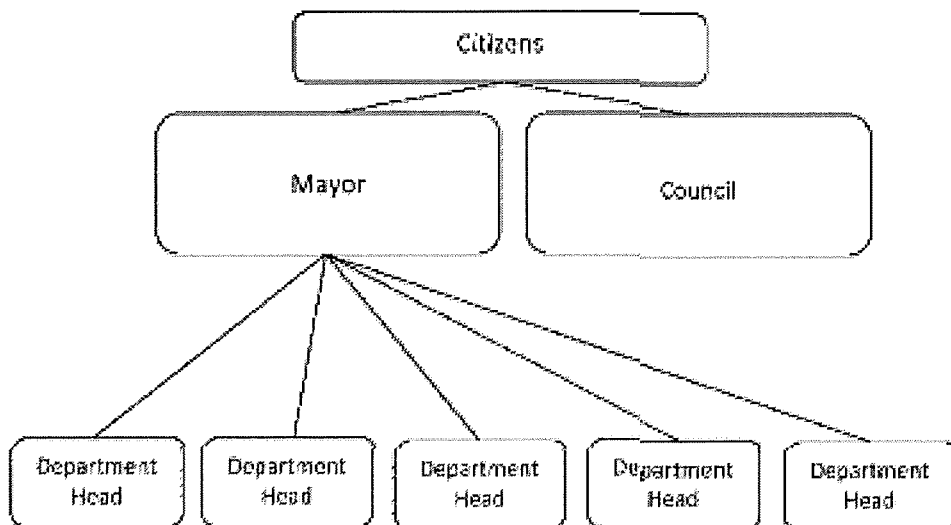
A more thorough discussion of all of these charter components is presented in the latest edition of the Model City Charter published by the National Civic League. Commission members are urged to refer to the Model City Charter for background information, further detail, and insightful commentary on all aspects of charter revision discussed here.

Figure 1
Forms of Government

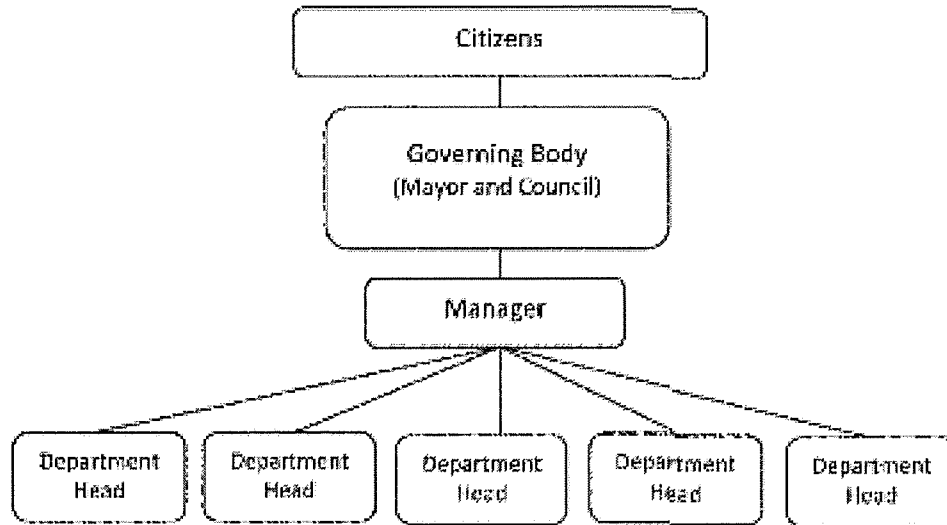
Mayor-Council



Strong Mayor-Council



Council-Manager



Appendix

Which Form of Local Government is Right for Us?

37

A charter specifies a form of government. Because of its significance, a local government's form of government arguably influences every facet of its operation. Therefore, it is one of the most fundamental issues to address in the early work of a charter commission. Oftentimes, form of government is not on the table for discussion. However, for many cities, the underlying form of government is fair game. It is certainly a matter of discussion for a newly-formed city writing its first charter.

It is hard to exaggerate the significance of a city's underlying form of government. A city's form of government is the constitutional and legal basis for assigning authority and functions to government officials and creates its overall framework. Form shapes the nature of official roles and channels interactions into likely patterns of relationships, i.e., who talks to whom, who gives instructions to whom, and how are those instructions interpreted and acted on by the recipient. The United States is unique in having widespread use of two forms of government based on different constitutional principles. The essential differentiating characteristic is whether power is divided between the mayor and the council as in mayor-council governments, or resides in the council as in council-manager governments.

A city's decision about governmental form should be made only after a thorough and thoughtful examination of the different forms, the governmental characteristics represented by each, and the qualities local citizens would like to see in their government. This single decision will arguably influence more facets of government than any other. If the community is discussing form of government as a part of the charter review process, it might be helpful to step back and ask why form of government is on the table. As mentioned earlier, governmental form is a critical and necessary question for a city establishing its first charter. In other cases, a city in the midst of charter reform may consider moving away from its current form of government. To begin the discussion of the latter case, the following questions may be useful:

- What is the specific catalyst or impetus for desiring a change in the form of government?
- How will the proposed change in structure, function, and powers impact governmental leadership, management, operations, processes, and services - both positively and negatively?

Interestingly, while form of government is one of the most profound decisions a community can make about its local government, it is also one of the most commonly misunderstood. How a particular form of government plays out in everyday governmental operations is often not understood by many citizens. This lack of understanding poses a challenge when attempting to engage citizens in a meaningful discussion on the topic. At times, misunderstandings and misperceptions regarding the different forms of local government undermine constructive dialogue. Informal opposing groups advocating one form over the other can spark potentially uncomfortable and passionate debates. For this reason, conversations surrounding form of government should be handled delicately. For those commissions discussing form, a useful starting point is the presentation of an unbiased, fact-based, educational overview of the different forms.

Different Forms of Municipal Government

Today, most cities operate under either the "mayor-council" form or "council-manager" form of government. The mayor-council form is modeled after the structure of the national government with checks and balances similar to those found in the U.S. Constitution. Like the constitution, little attention is given to the administrative responsibilities of the government. The council-manager form emerged as a proposal for reform in the early twentieth century. It was designed to focus on sound democratic governance determined by a unified mayor and council with professional advice provided by a professional

city manager accountable to the council. The manager is responsible for advising the council, implementing council decisions, and acting as steward of municipal resources. The National Civic League, established in 1894 to facilitate more honest and efficient local governments, has been a strong advocate of the council-manager form since its second Model City Charter adopted in 1915. Although this form departs from the divided powers principle in the national and state governments in the United States, the governing board-appointed executive model is the predominant structure in school districts and other special districts, hospitals, and nonprofit organizations.

Since it emerged, the council-manager plan has grown in popularity and is now the most widely used local government form in the United States in cities over 10,000. The council-manager form is also seen internationally in Canada, Australia, and other countries. Part of its appeal is its simplicity and its strong emphasis on democratic governance and professionalism. The International City/County Management Association (ICMA) reports that in 2010, there are more than 3,500 city governments in the U.S. operating under the council-manager form.

Mayor-Council

Within the mayor-council form, there are variations in the division of power and authority. (See Figure 1) In both categories discussed here, the primary executive role is assigned to the mayor and the primary legislative (policymaking) role is assigned to the council but other officials may be involved as well depending on the exact features of the form.

The traditional mayor-council pattern is based on both separate and shared responsibility between the mayor, council, and other officials. It is often called the "weak mayor-council" form. Details differ but the top charts in Figure 1 illustrate two common examples. In addition to the division of policymaking and administrative roles between the mayor and council, a department head may report to a separate commission or a department head may be directly elected. Because of the fragmentation of authority under this form, arriving at consensus on a particular policy and achieving coordination can be difficult.

Many mayor-council cities have eliminated the features that produce fragmentation of authority, but assign overlapping and offsetting authority to the mayor and council. As in the U.S. Constitution, the mayor may have authority to appoint top administrators, but job candidates are subject to confirmation by the city council. The mayor typically has executive power for the local government's day-to-day management and operations, prepares and administers the budget, and carries out policies. The mayor typically has the authority to veto legislation passed by the council but subject to override by a supermajority in the council.

The strong mayor-council pattern emerged as a reform to weak mayor-council structures with highly fragmented authority and centralized more powers in the mayor's office. It is illustrated in the lower organizational chart in Figure 1.

Not only is the mayor the chief executive officer but also enjoys a high degree of independence. For example, the strong mayor has executive power to hire and fire department heads and city staff and to appoint members to city advisory boards. The mayor typically has greater latitude to act without council approval, for example, the authority to sign larger contracts. Information and analysis conducted by the city staff goes to the mayor who decides what

information will be shared with the council and the public.

Under this pattern, the city council is responsible for policymaking by way of resolutions and ordinances. Council members have no administrative power. The council has a broad oversight role but may have more difficulty getting information from administrative departments whose heads are the mayor's appointees. The mayor possesses the authority to veto actions of the city council. Although the council has authority to override the mayor's veto, the majority may not be able to assemble the super-majority that is required, for example, two thirds of the members rather than half plus one of the members. Stalemate between the mayor and council results when the mayor can block a council majority but the council does not have the extra votes to override the veto.

Those who champion the strong mayor-council pattern desire a strong independent political leader who also serves as the chief executive with centralized authority and limited checks on that authority. It is hoped that, from electoral support, the mayor can successfully enact programs and policies that are supported by and in the best interest of the citizens. Supporters argue that political responsiveness and political control will result in governmental actions that are supported by a majority of the community. On the other hand, the concentration of political and administrative power in one office may contribute to the misuse of authority, a diminished role of the council, the dismissal of professional information and advice or a lack of transparency.

The addition of a "chief administrative officer" (CAO) to the mayor-council form has become increasingly popular with mayor-council cities. The National Civic League recommends the addition of a CAO to all types of mayor-council governments. While the responsibilities of a CAO can vary widely, this individual is hired to handle some degree of the administration of the local government. How the CAO is appointed matters. The latest model city charter recommends a professional CAO who is either jointly selected by the mayor and the council or nominated by the mayor and approved by the council. This method encourages the CAO to be responsive to both the mayor and the council since both were involved in the hiring decision.

Council-Manager

The council-manager form of government emerged as a result of local government scandals and corruption in the late 19th century and early 20th century. In an effort to find an alternative to the mayor-council form, government reformers advocated the council-manager form in hopes that it would be a more business-like approach to local government. Consequently, the structure of this form mirrors that of a corporation. The citizen-voters serve as shareholders who elect a city council to fill the role of a board of directors. The mayor serves as the chair of the board. They, in turn, hire a professional manager (similar to a corporate CEO) to implement the policies established by the council. This trained, professional, nonpartisan manager serves as the chief executive, has authority to manage all aspects of local government operations, and is continually accountable to the elected officials. (See Figure 1) If the manager is not performing to the satisfaction of the elected officials, the manager can be removed at any time. In sum, the city council fills the policymaking role and an appointed city manager is responsible to the council for policy advice and the executive functions.

Under this form, all local government powers rest with the governing body of elected officials, which includes the mayor. Since the mayor is a part of the city council, he or she usually does not have veto power. The mayor's contributions are based on the dual role as leader of the community and leader of the council. Effective mayors develop a shared vision for the city supported by the council and facilitate cooperation within the council and between the council and the manager. The mayor does not play a direct role in the administration of any aspect of city administration. The city manager provides information and recommendations to the entire council in public sessions that assure complete transparency. In addition, the manager is accountable to the council as a whole to provide information on city government performance to the council's oversight function.

While the governing body can issue instructions to the manager, elected officials are not allowed to go around the manager and issue a directive to any staff member under the authority of the manager. In this way, lines of accountability are clear. The city manager is singlehandedly responsible for all aspects of municipal operations including hiring and firing department heads (with the exception of the city clerk and often the municipal judge) and preparing and administering the municipal budget. The governing body holds the manager responsible for making sure their goals are being pursued and that the business of the local government is carried out efficiently and professionally. In addition, the city manager typically advises the council on various matters impacting the city. The city manager is a "controlled executive" chosen by the council to meet the distinct needs of the city, evaluated by the council on a regular basis, and can be removed at any time.

The city council in a council-manager city, serving as the city's governing board, provides a much different kind of political leadership than that found in mayor-council governments. In council-manager governments, the city council and mayor focus all energy and attention on the "big picture" by setting goals, monitoring progress toward those goals, and overseeing governmental operations. Supporters of this form value its tendencies toward politically-neutral policy recommendations that emphasize a long-term and communitywide perspective, effectiveness of policy implementation and service delivery, efficiency, clear lines of accountability, and a professional approach to city management.

Those who wish to alter either form's basic features should be cautioned. While a local government should adopt a form of government that fits its unique community, it is a mistake to think that one community is so "different" that it should tinker with the form and move away from the well-tested principles that have proven effective over years of experience in local communities of all shapes and sizes. Under both plans, variations are seen in at-large vs. district elections and partisan vs. nonpartisan elections, for example. However, ignoring fundamental aspects of either form of government can easily undermine the central principles of organization and official responsibilities essential for success.

Without question, the consequences of choosing one form of government over another should be carefully considered by charter commission members. Because there are so many excellent resources available that provide details about the plans as well as their advantages and disadvantages, the discussion offered here should be considered only a starting point or a "refresher" regarding the different forms of government.

Suggested Readings

Note: This abbreviated list of suggested readings represents just a sample of the resources available that address the topics covered in this *Guide*.

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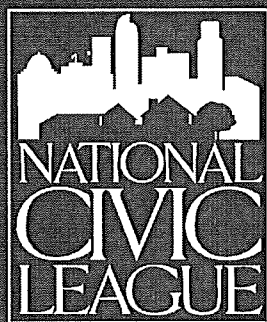
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