TOWN BOARD REGULAR MEETING AGENDA

Location: Hybrid
South Metro Fire Protection District Station #42
7320 South Parker Road

Or

Meetings | Town of Foxfield (colorado.gov)

Thursday, August 7, 2025: 6:30 p.m.

Call to Order

1. Pledge of Allegiance
2. Roll Call of Board Members
3. Audience Participation Period (limit 4 minutes per speaker)
4. Consent Agenda
   a. Approval of Minutes – July 17, 2025
5. For Possible Action
   a. SEH 2025 Traffic Calming Supplemental Agreement
6. For Discussion
   a. Home Rule
7. Reports
   a. Members of Town Board
   b. Staff

The Town of Foxfield is committed to accessibility. For assistance or questions concerning accessibility please contact clerk@townoffoxfield.com.

8. Future Agenda Items
    a. Tunnel and sidewalk repairs
    b. MHFD public outreach
    c. Culvert Clean-up
    d. Land Use Code Final Draft
    e. Speed Mitigation
    f. Wards Discussion
    g. Home Rule
    h. Social Committee

9. Adjournment

BOARD OF TRUSTEES MEETING MINUTES

July 17th, 2025

Call to Order

The meeting was called to order at 6:30 p.m. via Microsoft Teams.

1. Pledge of Allegiance

2. Roll Call

The following Trustees were present in person: Mayor Jones, Trustee Cockrell, Trustee Hodge, Trustee Lawrence, Trustee Pakanati, and Trustee Thompson.

A quorum was present.

3. Audience Participation

None

4. Consent Agenda
   a. Mayor Jones moved to approve the Consent Agenda, with a second from Trustee Thompson. The motion passed unanimously.

5. For Possible Action
   a. SEH 2025 Traffic Calming Supplemental Agreement

Ms. Proctor presented the board with the supplemental letter that would need to be approved in order for them to start the work. Trustee Cockrell mentioned that some amounts came from years ago. Trustee Thompson suggested looking at Hinsdale, Easter, Waco, and other problem areas to also include in this study to decide where to concentrate. Jithu mentioned that in the breakdown, the actual speed mitigation such as speed humps, would not be included. Trustees' discussion included bidding this project out, itemizing the cost, and the amount of professional time. Ms. Proctor mentioned that this is an estimate to begin to work, once they provide the recommendation then that will be more detailed. Trustee Cockrell mentioned that she does not want SEH to explore traffic mitigation methods that have already been thoroughly explored by Foxfield. Trustees discussed the $650 amount to study additional corridors and what that included. Mayor Jones clarified what the board wanted and asked if the board wanted SEH to suggest where to place speed humps and the type of speed mitigation tool that would be best. The board agreed. Ms. Proctor said that she will bring this back so that there is a clean copy.

6. Reports
    a. Members of Town Board
        i. Trustee Thompson inquired about the CDOT the walkway tunnel. She took a picture and will send it to us so we can look into it. Ms. Proctor mentioned that they were going to remove the sidewalk. Trustee Lawrence said that there was a concrete truck there yesterday.
        ii. Trustee Pakanati said that he would like the traffic counters to be moved to a different location and said that a resident approached him with concern about traffic. He mentioned that he would like the data records we get by email to be saved to One Drive.
        iii. Trustee Cockrell gave a DRCOG update. She informed the board of the small area's forecast map. Trustee Cockrell mentioned the inaccurate forecast and will send us the data to follow up. She asked for an update on the STR. Ms. Proctor stated she would ask Attorney Hoffmann for an update.
        iv. Trustee Lawrence stated he has been asked by residents about the status of the STR. More discussion was held on the DRCOG forecast tool.
        v. Trustee Hodge asked about the Chenango resident that wanted gate tags. Ms. Torres mentioned that the resident never got back to her. Trustee Lawrence mentioned the speed report and said that 50% of traffic was 5 below the speed limit. Trustee Thompson explained the information that was received to the rest of the board. Trustee Lawrence asked if the new signs at the gates had any effect. Ms. Proctor mentioned that the scooters are back. Discussion included sending out a reminder to the Town. Trustee Cockrell interpreted the traffic information and mentioned that our data demonstrates that we don't have a traffic issue but that we have a social issue because our residents are unhappy. Trustee Thompson mentioned how she has broken down the data in the past and the knowledge she has on our data up until now. Trustees talked about the Fourth of July Parade and the Picnic. Trustee Thompson mentioned that everyone was happy with the event and the turnout. She asked about getting covers for tents and talked about cost. Ms. Proctor granted permission.
    b. Staff
        i. Town Administrator Proctor
            1. Ms. Proctor talked about Home Rule. She asked the board if the direction was to put together a fact sheet, get something on the website, and put together a Town Hall meeting. The Board mentioned the negative reaction from Douglas County. Ms. Torres informed the Board of the timeline for voting and the options that the board had for coordinating with the county or the regular election. Ms. Proctor and the Mayor clarified that we would have CML present, let the Town ask questions, and seek their approval for this. Trustee Thompson suggested getting the fact sheet on the website. Trustees agreed to a Town Meeting with CML in October and to use that meeting as a gauge for whether we want

to put this on the ballot. Ms. Torres clarified that we would be asking to put a committee together first for the charter, then voting on that charter in November. Ms. Proctor said that roadwork will likely be scheduled for next month. She gave the board an update on the LUC and asked if the final review should be as a group or individual. Trustees decided that it should be individual. Ms. Proctor mentioned that culvert letters will be sent out next month.

ii. Town Clerk Torres

1. Ms. Torres asked about the Town Garage Sale. The Trustees decided on the dates Aug 22nd-23rd. Trustee Cockrell said she will not be at the second meeting in August and Trustee Thompson will be attending remotely.

7. Future Agenda Items

a. Tunnel, sidewalk repairs
b. MHFD public outreach
c. Culvert Clean-up
d. Land Use Code Final Draft
e. Speed Mitigation
f. Ward discussion
g. Home Rule
h. Social Committee

8. Adjournment

Mayor Jones adjourned the meeting at 7:38 pm.

Monica Torres

_____

Monica Torres, Town Clerk

Lisa Jones

_____

Lisa Jones, Town Mayor

MEMORANDUM

TO: Mayor Jones and Members of the Board

FROM: Karen Proctor, Town Administrator

DATE: August 7, 2025

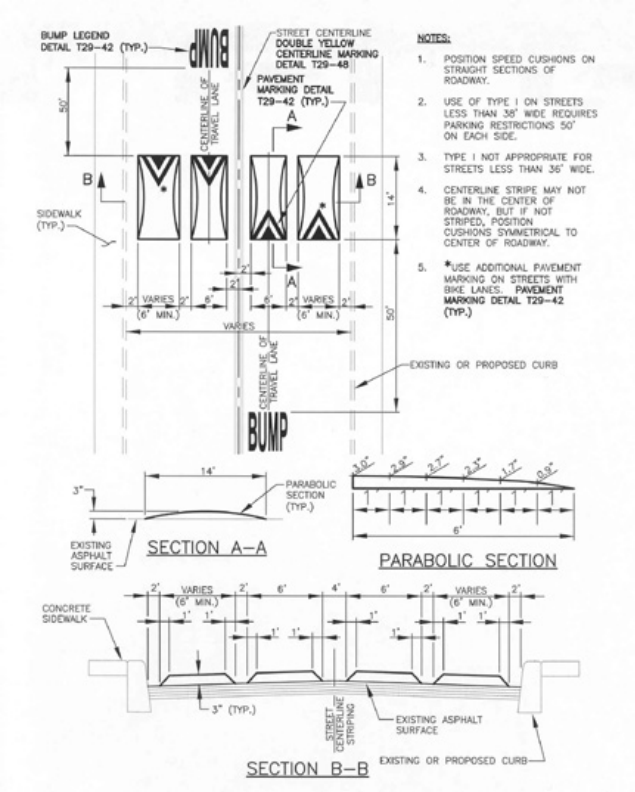
RE: SEH 2025 Traffic Calming Supplemental Agreement

DISCUSSION:

Attached is the revised SEH scope and fees for the 2025 Traffic Calming assessment and design.

Following is clarification from the questions raised at the last meeting:

- Task 2 would be a narrative like "spacing every 500' from speed hump, intersection or existing drainage dip and recommended design is 4' wide speed hump."
- Task 3 would be the construction detail similar to the one below including specifications with paint and signage (this is just a random image from the internet - not an SEH design)
- Additional corridors we would do the spacing and type evaluation but if the Board needed a different design that would be extra. If it was the same detail, we could re-use that for no additional cost.
- SEH did use "assumed speed humps" as a baseline to do the estimating. Dips/medians and similar would be no change in cost as it would be the same approach to spacing and the time to detail is roughly similar.



In The Town of Foxfield approved 2025 budget, there is $40,000 for traffic calming.

SUGGESTED MOTION:

"I move to approve the 2025 Supplemental Letter Agreement for the 2025 Traffic Calming Recommendations and Design"

ATTACHMENT:

Exhibit A – REVISED SEH 2025 Supplemental Letter Agreement

Supplemental Letter Agreement

In accordance with the Master Agreement for Professional Services between Town of Foxfield ("Client"), and Short Elliott Hendrickson Inc. ("Consultant"), effective January 1, 2015, and the 2025 Contract Amendment, this Supplemental Letter Agreement dated August __, 2025 authorizes and describes the scope, schedule, and payment conditions for the Consultant's work on the Project described as: **2025 Hinsdale Corridor Traffic Calming Recommendations and Design**

Client's Authorized Karen Proctor, Town Administrator
Address: P.O. Box 461450
Foxfield, Colorado 80046-1450
Telephone: 303.905.9339 **e-mail:** kproctor@townoffoxfield.com

Project Manager: Erica Olsen
Address: 2000 S. Colorado Blvd. Tower 2, Suite 1200
Denver, CO 80222
Telephone: 303.586.5828 **e-mail:** eolsen@sehinc.com

The Basic Services to be provided by the Consultant as set forth herein is provided subject to the General Conditions and Exhibits attached to this Agreement.

Understanding: SEH has developed this scope and fee to address the request for recommendations for traffic calming for the Town of Foxfield.

SEH's project team will consist of Erica Olsen, PE, who will serve as Project Manager and Professional Engineer, Ken Brubaker, PE, senior technical advisor, Mitch Wagner, PE, traffic engineer/designer and Blayne Risk, PE bid and construction field support.

Project History: In 2016, SEH evaluated the traffic conditions in Foxfield. Many calming options were evaluated and as a result the Town installed the traffic gates at Richfield and Fremont. The gates have significantly reduced cut through traffic but based on speed data there is a continuing issue with speeding on some roads in Town. The Town Board and Traffic Committee have asked SEH to review the data and make recommendations for spacing and design of speed humps along Hinsdale Ave. The Town is also open to other recommendations.
SEH will develop recommendations based on the discussion at the June 5, 2025 Board meeting. The potential traffic calming alternatives included speed humps, chicanes, choke/pinch points, medians, and signage. SEH will also utilize the 2025 Arapahoe County Neighborhood Traffic Management Program as a reference document. The Town has a $40,000 budget in 2025 for installation of traffic calming.

Scope of Services:

Proposed services include the following:

Task 1 – Administration

- Project task set up and close-out
- Miscellaneous task coordination with Town staff.

Task 2– Program Development

- Review data and outline recommendations within Town budget
  - Assess Hinsdale Ave. corridor for standard potential traffic calming options.
  - Utilizing Hinsdale Ave. findings, apply towards assessment of Easter Ave., Richfield St., and Waco St. corridors.
  - Town to provide most recent available traffic counts and speed data to SEH.
  - SEH will recommend spacing and typical design type for selected option. (assumed to be some type of speed hump)
  - SEH will prepare a memo of recommendations for Town Board review.

Task 3 - Bid Document Preparation and Assistance

- Not included at this time

Task 4 – Construction Services

- Not included at this time

Scope Exclusions

The proposed work does not include:

- Field Survey
- Utility Locates
- Construction design plans, specifications or estimates
- Fees for posting or advertising
- Material testing
- Preparation of construction traffic control or MHT plans
- Services include no more than two reviews of contractor submittals
- Daily construction observation
- Title commitments
- Legal descriptions and exhibits
- Construction survey staking
- An item of work that is not specifically included and identified as a "Task" within the Scope of Work is specifically excluded from the Scope of Work.

Schedule:

Data review to begin after Notice to Proceed and speed/count data received by SEH.
Initial recommendation and draft memo within 3 weeks of NTP.
Review by Town – 1 week

**Note: Town should be aware that placement of asphalt materials is recommended with temperatures of 50 deg F and raising. Availability of materials will be subject to plant operating schedule and available mix designs.*

Payment:

Attached is a spreadsheet with estimated hours for each task based on the hourly rates in our 2025 on-call contract amendment. The total, not-to-exceed, fee for this proposal is **$5,995.00**. These fees include labor, expenses, mileage and materials. Additional work, if requested, shall be compensated in accordance with the contracted 2025 rates.

1	Administration	$ 645.00
2	Program Development	$5,350.00
	Expenses	$0.00
	Total =	$5,995.00

Other Terms and Conditions:

SEH will not proceed with this work without prior approval from the Town of Foxfield. If this proposal is accepted, please sign below and return a pdf copy to SEH. Please feel free to call Erica Olsen or Scott Jardine with any questions.

Thank you for providing SEH this opportunity to assist you with this important project.

Sincerely,

SHORT ELLIOTT HENDRICKSON INC.

Erica Olsen, P.E. CO
Project Manager
720.280.3695

Accepted for the Town of Foxfield

By:_____

Title:_____

Date:_____

	2025 Hinsdale Traffic Calming Plan, Bid and Construction Assistance								
	August 1, 2025								
Task	Description	Senior Project Manage	Senior Technical Lead	Professional Engineer I	Professional Engineer II	Senior Accountant	Sub Consultant	Expenses	Task Subtotal
	2025 Hourly Rates	$250.00	$250.00	$167.00	$200.00	$145.00			
			Traffic		Traffic				
									$645.00
1	**Administration**	2				1	$0.00		$645.00
2	**Program Development**								**$5,350.00**
2.1	Review data and assess corridor - Hinsdale Ave.	1	1		4		$0.00		$1,300.00
2.1	Review data and assess corridor - Easter Ave.		1		2		$0.00		$650.00
2.1	Review data and assess corridor - Richfield St.		1		2		$0.00		$650.00
2.1	Review data and assess corridor - Waco St.		1		2		$0.00		$650.00
2.2	Recommendation memo	1	1		8		$0.00		$2,100.00
3	**Bid Assistance - Not included at this time**								**$0.00**
4	**Construction Services - Not included at this time**								**$0.00**
	Subtotal Hours	4	5	0	18	1			
	Subtotal Fees	$1,000.00	$1,250.00		$3,600.00	$145.00	$0.00	$0.00	
	Total Project Estimated Labor								**$5,995.00**
	Expenses trips 0								**$0.00**
	Total Time & Materials Not-to-Exceed Fee								**$5,995.00**

Notes:
Data collection to be done by Town

MEMORANDUM

TO: Mayor Jones and Members of the Board

FROM: Karen Proctor, Town Administrator

DATE: August 7, 2025

RE: Home Rule

DISCUSSION:

Attached for the Boards review, and approval to post on the Town's website and send an email to Town residents, is an overview from CML (Colorado Municipal League) on Home Rule and a Home Rule Handbook.

There are 108 total home rule municipalities in Colorado. Most of them are over 2000 population, but many of the more recent ones are small and even under 2000 population. See page 6 of the CML member directory for more information.

Population doesn't really factor into anything, except for the election of a home rule charter commission. Municipalities 2000 and under are limited to nine members, which is plenty. Larger municipalities can have up to 21 members.

Mr. Kevin Bommer, Executive Director of CML, will hold a Town Hall meeting in Foxfield on October 16th, 2025. He will do a Home Rule presentation and answer residents questions.

ATTACHMENT:

Exhibit A – Overview of Colorado Municipal League Home Rule 2025
Exhibit B – Home Rule Handbook 2022

Overview of Colorado Municipal Home Rule

Your source for advocacy, information and training.

This column is not intended as and should not be taken as legal advice.
Municipal officials are always encouraged to consult with their own attorneys.

Municipal Home Rule in Colorado

Historically, municipalities are seen as "creatures of the state," dependent upon the state for their creation and for their continued existence. Without home rule status, municipalities can exercise only those powers that have been granted by the state and are subject to limitations that have been imposed by the state. Through Article XX of Colorado's Constitution, Colorado voters reserved both structural and functional home rule powers to municipalities and "the full right of self-government in local and municipal matters" to citizens.

Article XX provides a particularly strong version of home rule. In 1902, voters first approved a constitutional amendment allowing citizens in cities of the first and second class to adopt home rule. A 1912 amendment clarified and Section 6 of Article XX to specifically enumerate various municipal home rule powers with a powerful "catch-all" paragraph. In 1970, voters again amended Article XX to allow all municipalities to adopt home rule regardless of population or date of incorporation.

For detailed information, visit www.cml.org to obtain a copy of CML's *Home Rule Handbook* (2022).

Initiating Home Rule

Forming a charter commission: Proceedings to adopt a home rule charter may be initiated by ordinance of the governing body or by submission of a petition signed by 5% of registered electors. Within 30 days of initiation, the governing body must call an election to form the charter commission and elect members of the commission. The election must be held within 120 days of the call of the election. The charter commission must have an odd number of seats but can range in size from 9 to 21 seats, but a commission for a municipality with a populations under 2,000 must have 9 seats.

Interested candidates for the charter commission must file a sufficient petition with the clerk within 30 days of publication of the election notice, signed by at least 25 registered electors. All registered electors of the municipality are eligible to serve, but membership may be based on district or at-large representation.

Adopting a charter: After the election, the charter commission organizes itself and conducts meetings, including at least one public hearing. The charter commission may employ staff and consult experts. Within 180 days of its election, the charter commission shall submit to the governing body a proposed charter.

Within 30 days, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved. The election shall not be held less than 30 or more than 185 days after publication of the notice.

Remember that campaign finance laws apply to charter elections.

Drafting a Home Rule Charter

Because home rule municipalities constitutionally have all "powers necessary, requisite or proper for the government and administration of its local and municipal matters," a home rule charter in Colorado is principally an instrument of limitation in Colorado. The charter establishes the basic structure and organization of government, basic procedures to be followed by municipal government in the conduct of its business, and basic powers of the governing body and municipal officials and agencies, including any limitations. In the absence of a charter or ordinance provision, state law applies.

Contents of a Municipal Charter

- Mandatory provisions:
    - Provisions governing initiative, referendum of measures, and recall of officers (C.R.S. § 31-2-212)
- Other examples of charter provisions
    - Prefatory synopsis
    - Provisions continuing, amending or repealing existing ordinances
    - Governance structure (the pyramid structure of a council-manager form is the municipal gold standard) and legislative authority

- Qualifications, terms of office, term limits, number of councilmembers, and method of election
- Election procedures
- Administrative and legal officers and their authority
- Municipal court organization and jurisdiction
- Boards and commissions
- Single subject requirement for citizen-initiated charter amendments
- Personnel, merit or civil service system
- Budget and financing

Considerations in Drafting a Charter

A charter does not need to spell out the details of municipal operations. Charters are not easily or readily amended. Great care must go into their drafting and unnecessary details and verbiage should be avoided. The governing body can adopt ordinances and resolutions from time to time to work out the details.

Borrowing provisions from other charters is helpful and time saving, but be wary of using charters from Colorado municipalities that were adopted years ago. Guard against lifting unnecessary detail from other charters and be aware that charter provisions borrowed from the municipalities may not be relevant or appropriate for your community.

Tips for drafting a charter:

- Work expeditiously and efficiently within the tight 6-month timeline.
- Reply on competent legal counsel, experts, and staff.
- Provide adequate opportunities for public education and input.
- Clearly spell out form of government, allocation of legislative and administrative powers, roles & responsibilities, and the chain of command.
- Take the long view and avoid cluttering the charter with today's hot button issues, "red tape," or detailed administrative or procedural matters.
- Spell out the legislative process clearly so it can be understood easily for generations and won't be a roadblock to action. Identify which actions must be by ordinance as opposed to resolution or motion and the procedures applicable to enactment of ordinances.
- Future the elected officials with sufficient flexibility to act and be responsive.
- Cross-reference state statute to avoid duplication (e.g., municipal elections) with modifications where deemed locally appropriate. Remember that changes in state law will then be incorporated into your charter.
- Avoid unnecessary provisions sought by special interests.

Authority and Flexibility Afforded to Home Rule Municipalities

Organization & Structure

- Form of Government: city manager who answers to council; strong mayor - weak council; or strong council - weak mayor system
- Disqualifying circumstances for elected officials
- Grounds and procedures for discipline or removal from office
- Number and types of elective offices and methods of election (e.g., at-large or by districts)
- Minimum age for elected officials
- Powers of mayor, council, manager, other officers and boards and commissions
- Council procedures

Elections

- Regular election dates and times other than the dates required by statute
- Special election flexibility
- Election requirements, including procedures for initiative, referendum and recall.
- Right to vote in municipal elections
- Expansion of citizen powers, like initiative, referendum, and recall

Procedures

- Requirements for enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities, timing, and publication requirements
- Delegation of decisions to administrative staff
- Procurement and contracting
- Disposal of public property
- Local planning, zoning, subdivision, and other land use matters

Finances

- Local collection and enforcement of local sales/use taxes
- Adjust sales and use tax base, refunds, and exemptions
- Additional types of excise taxes: admissions, entertainment, tourism, and lodgers' taxes
- Procedures for budget and appropriation and municipal enterprises
- General obligation bond authority and requirements for issuance of bonds
- Use of special improvement districts

Miscellaneous Powers

- Management and operation of municipal utilities
- Terms and conditions of municipal employment and civil service or other personnel systems
- Municipal court jurisdiction
- Economic development tools
- Types of municipal services
- Ethics and conflict of interest rules

General Arguments *For* Home Rule

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities, providing greater flexibility when seeking solutions to local problems.
- Home rule municipalities can shape such solutions to fit local needs, without involving the state legislature or being subjected to undesirable limitations imposed statewide.
- Home rule allows municipalities to respond more quickly to changed circumstances or emergency situations by allowing legislative solutions at the local level through ordinances or charter amendments, rather than waiting for action by the state legislature.
- Home rule municipalities are not required to follow state statutes in matters of local and municipal concern and enjoy freedom from state interference regarding local and municipal matters.
- The express and implied enabling authority granted to municipalities in state statutes is sometimes ambiguous; home rule allows the municipality to act with greater assurance that its actions are properly authorized, especially if the charter reserves to the municipality authority to legislate on any and all matters of local concern.
- Home rule enhances citizen control, interest, involvement and pride in their municipal government.
- Home rule is the embodiment of the principle that the best government is the one that is the closest to the people.

General Arguments *Against* Home Rule

- A restrictive charter can diminish the flexibility offered by home rule.
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than statutory municipalities, which some may see as a disadvantage.
- A charter may serve as a vehicle for dissatisfied citizens to further limit the authority of the municipality in general and elected officials in particular through the adoption of binding charter amendments.
- The lack of definite limits on home rule powers may create legal uncertainty when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of "local concern" requires an ad hoc determination in court.
- The process of adopting a home rule charter involves some costs to the municipality – attorney's or other consultant's fees, publication costs, election costs, etc. can be a burden on the municipality.
- Adopting a home rule charter requires some change from the status quo along with the need to debate potentially volatile issues related to the structure and powers of the municipality, and therefore may be perceived as creating unnecessary risks in a community that is satisfied operating under existing statute.

Exhibit B

COLORADO MUNICIPAL LEAGUE

EMPOWERED CITIES AND TOWNS,
UNITED FOR A STRONG COLORADO

2022 HOME RULE HANDBOOK

COLORADO
MUNICIPAL
LEAGUE

TABLE OF CONTENTS


CML
COLORADO
MUNICIPAL
LEAGUE

FOREWORD TO THE 2022 EDITION

This Home Rule Handbook has been developed by the Colorado Municipal League as a starting point for Colorado municipal officials considering home rule or amending existing home rule charters. It is designed to be an introduction to the establishment and exercise of municipal home rule rather than a comprehensive discussion of the subject.

Readers looking to begin the home rule process can locate guidance in Chapter III.

Attorneys will find the handbook to be a thorough source of case law, including an extensive table of case law evaluating areas of local and statewide concern and the scope of home rule authority.

Any municipality considering the adoption, amendment, or repeal of a home rule charter or adopting an ordinance asserting home rule powers should obtain the advice of legal counsel.

The Home Rule Handbook was first published in 1972. The current edition was updated by former CML General Counsel David Broadwell and Law Clerk Megan Decker. This edition contains judicial rulings on the subject of home rule through Dec. 31, 2022. Carried forward in this edition is Chapter 1 detailing the history of home rule in Colorado, authored by Kenneth Bueche, CML executive director from 1974 to 2005. A companion CML publication, Matrix of Home Rule Charters, details how more than 80 different elements are addressed in each Colorado municipal charter.

Kevin Bommer

Executive Director

Colorado Municipal League


CML
COLORADO
MUNICIPAL
LEAGUE

CHAPTER I
A HISTORY OF HOME RULE

MUNICIPAL HOME RULE DEFINED

In Colorado, municipal "home rule" derives its authority directly from Article XX of the Colorado Constitution. It is a form of government under the control of local citizens rather than state government, with powers and authority derived from the municipality's locally enacted charter and ordinances, rather than state statutes. It affords citizens of cities and towns who adopt a local charter freedom from the need for state enabling legislation and protection from state interference in "local and municipal matters." Home rule does not, however, affect any powers of the federal government—home rule authority relates to state-local relations, not federal-local relations.

Until the advent of home rule authority, municipalities and other local governments were exclusively creatures of the state legislature, dependent on state enabling legislation and subject to state control and interference. This historical relationship between the state and municipal governments is known as "Dillon's Rule," named for a 19th-century Iowa Supreme Court justice and municipal law authority. In those states with home rule governments, the authority to establish and operate home rule municipalities is established by state statute or constitutional enactments, which override "Dillon's Rule."

ORIGIN AND HISTORY OF HOME RULE IN OTHER STATES

The government of many American cities was bad, if not terrible, during the last decades of the 19th century. The era of 1865 to 1895 was one of tremendous physical growth of cities and expansion of municipal activities. From a municipal administration standpoint, it was a period of disintegration, waste, and inefficiency. Political machines and bosses plundered many communities. Lax moral standards in business life, the apathy of the public, and general neglect of the whole municipal problem by leading citizens, the press, and universities, all contributed to the low state of municipal affairs. Lack of a common body of knowledge and definite standards for municipal government, coupled with legislative interference and local politics, produced a confused situation in local organization and responsibility. Corruption in city government was made possible by the prevailing spoils system, by the activities of national political parties in local elections, and by the absence of adequate instruments of democratic control and of scientific methods of administration. Few outstanding public officials and administrators existed, municipal reference and research agencies were nonexistent, and organizations of public officials were in their infancy. The period has been justly described as the "Dark Ages" of American municipal history.[1]

In response to the treatment of cities by state governments, the home rule movement began. In 1875, Missouri became the first state to adopt home rule by inclusion in its new constitution of home rule entitlement for cities greater than 100,000 in population. California became the second state to authorize home rule after adopting its new constitution in 1879. Other states conferring home rule rights for cities during the remaining years of the 19th century included Minnesota and Washington. However, home rule and other municipal reforms became much more popular and prevalent during the Progressive Era—a period that historians generally date from 1900 to 1915 or 1920.[2]

---

[1] *See* FRANK MANN STEWART, A HALF CENTURY OF MUNICIPAL REFORM: THE HISTORY OF THE NATIONAL MUNICIPAL LEAGUE (University of California Press 1950).

[2] JOHN A. RUSH, THE CITY-COUNTY CONSOLIDATED 141-150 (1941).

A leading historian of American city government during the Progressive Era summarized the movement this way:

> *In conclusion, how shall we account for and describe the Progressive movement? There were national problems of great magnitude evidencing themselves chiefly in the cities. For the most part these were accounted for by the nineteenth-century changes in the nature of the economic world, for which the old assumptions were inadequate and many of them incorrect. Whole groups of people were aroused to compassion and indignant at the now patent injustices because of these facts and the attendant frustrations. Diagnosis and exposure of the problems had begun. At this point pragmatism with a conscience leading to activism took over. It was a confluence of many strands—Populist, utopian, the experience and sensitivity of the settlements, the social gospel and the aroused conscience, the successes and failures of earlier reformers, frustrations of many groups, socialist reasoning, the rising consciousness of organized labor, scientific management, the Spanish–American War and its aftermath, a belief in progress—but all raised to a higher level, together with a freshness of approach and a moral component.*[3]

Reformers were interested in a number of reform devices, including home rule, to foster a sense of community. According to Griffith:

> *Most stress was laid upon home rule, nonpartisanship, elections-at-large, and development of neighborhood centers. Naturally, there were other arguments for each of these. Among them was the thought that each would help weaken the power of spoils, the machine, and corrupt politics, at the state, city, and ward levels … Government by the state, an agency outside the control of the voters of the individual city, was naturally the subject of further attack by the exponents of city self-government. The demand on the part of the city was insistent for a greater voice in its own affairs.*[4]

Numerous states, including Colorado, adopted municipal home rule during the Progressive Era. The progressive movement and the rush for home rule slowed down greatly after the commencement of World War I; however, additional states have adopted home rule over the years since then.[5]

The National Municipal League was probably the most prominent and influential national organization in promoting home rule and other municipal reforms during the Progressive Era and thereafter. The organization was founded in 1894 by local citizen groups and individuals interested in reforming municipal government. In later years, the League would devote attention to reforming county and state government.

In 1899, the National Municipal League adopted a "Municipal Program," publishing it the following year. Later it was to be referred to as a "Model City Charter." Over the years, the National Municipal League has published several revised editions. (The National Municipal League has changed its name to the National Civic League; it is not to be confused with the National League of Cities, which is the national association of cities and towns.) This "Municipal Program" contained provisions regarding municipal home rule to be incorporated in the state constitution and provisions for a Model City Charter. Its home rule features were described as follows:

> *Special legislation for cities was not absolutely prohibited, but it was surrounded by certain safeguards designed to protect the city from unwarranted interference with its local affairs. Home rule, the right to adopt and amend charters, was given to cities with a population of 25,000 or more. As Chairman Deming said, "The city's independence is guaranteed. The state legislature cannot meddle with purely local affairs." Elsewhere Mr. Deming defined the fundamental principle of the program in these words: "… ample power in the city to conduct the local government, without possibility of outside assistance or of outside interference save by such supervision of a central state administrative authority as may be necessary to enforce a state law applicable alike to all the cities or all the inhabitants of the state." All else in the program was detail in the application of this principle. And Professor Rowe declared that the object of the program was to provide such a position in the political system of the state and such a framework of government as would give*

---

[3] Ernest S. Griffith, A History of American City Government: The Progressive Years and Their Aftermath 1900-1920 32 (Praeger Publishers 1974).

[4] Ernest S. Griffith, A History of American City Government: The Progressive Years and Their Aftermath 1900-1920 123 (Praeger Publishers 1974).

[5] Ernest S. Griffith, A History of American City Government: The Progressive Years and Their Aftermath 1900-1920 123-125, 258 (Praeger Publishers 1974); John A. Rush, The City-County Consolidated 150-158 (1941).

to the city the widest possible freedom of action in formulating the details of its own organization and in the determination of its local policy.[6]

Home rule has remained a foundation of the National Municipal League's municipal reform agenda through the years, including its latest model state constitution and city charter.[7]

ORIGIN AND HISTORY OF HOME RULE IN COLORADO

Municipal home rule in Colorado was adopted by state voters in 1902 and clarified and expanded by voters in 1912. Colorado's adoption in 1902 was probably influenced by developments in other states and by recommendations of the National Municipal League. The National Municipal League's 1900 Model City Charter has been credited to have "formed the basis for a sweeping amendment to the Colorado Constitution."[8]

Historically, Colorado's own home rule movement appears to have been fueled primarily by actions of state government affecting Denver and its citizens and a desire to form a consolidated city and county of Denver.

Denver had been granted a charter in 1861 by the territorial legislature. Denver and those other cities that were still operating under territorial charters retained the right to continue to operate under their special charters rather than being governed by general municipal laws when the constitution was adopted and statehood granted in 1876. (Georgetown is the only municipality still operating under a territorial charter.)

Following statehood, Denver's territorial charter, because it was not yet constitutionally based, was periodically amended or replaced by the General Assembly, and Denver eventually became the "political football" of the party in power. Classic examples of state interference were charter amendments enacted by the General Assembly in 1889 providing for a board of public works, and in 1891 for a fire and police board, with members of both boards appointed by the governor. Thus, the state took over the control of Denver's public improvements, public safety, and other related activities.

Armed conflict nearly broke out in 1894 when Gov. Davis H. Waite had a dispute with two of his appointees to Denver's Fire and Police Commission over their failure to follow his policies and their subsequent failure to accept his attempt to remove them from office. Armed forces for the state and city faced off before cooler heads prevailed and weapons were withdrawn.

In addition to the desire for local control, civic leaders in Denver wanted to establish a consolidated city and county. Combining these two objectives in one movement proved to be powerful in terms of voter appeal.

A historic breakthrough in Colorado's home rule movement occurred in 1901 when Denver Sen. John A. Rush, with the support of Gov. James Orman, passed legislation to refer to statewide voters Article XX of the Colorado Constitution forming Denver as a consolidated home rule city and county and also conferring on the citizens of first- and second-class cities the right to adopt local charters and become home rule municipalities. Gov. Orman, in his inaugural address, gave strong support to the home rule amendment:

The question of home rule for Denver has been a disturbing one ever since the enactment of the law under which the governor appoints the Denver board of public works and the fire and police board. It may occur that governors will be elected that have little or no knowledge of the governmental affairs of such a city as Denver [and] the responsibilities for all city employees should be cast upon the people who live in the cities. Place the responsibility where it belongs—upon the voters of the city.[9]

---

[6] Frank Mann Stewart, A Half Century of Municipal Reform: The History of the National Municipal League 38, 53 (University of California Press 1950).

[7] The early history of municipal reform and home rule efforts and developments of the National Municipal League have been published in the following publications: Frank Mann Stewart, A Half Century of Municipal Reform: The History of the National Municipal League (University of California Press 1950); Alfred Willoughby, *The Involved Citizen: A Short History of the National Municipal League*, Nat'l Civic Review, Dec. 1969; Nat'l Mun. League, *Proceedings of the Milwaukee Conference for Good City Government and Sixth Annual Meeting of the National Municipal League* (1900).

[8] Frank Mann Stewart, A Half Century of Municipal Reform: The History of the National Municipal League 48 (University of California Press 1950).

[9] Marjorie Hornbein, *Denver's Struggle for Home Rule*, Denv. Mag., Fall 1971, at 345.

The amendment was approved overwhelmingly by a vote of 59,750 to 25,767.[10]

While the right of citizens in cities of the first and second class to adopt home rule was provided, the history is unclear to what extent these cities sought that right and to what extent voters in 1902 were influenced by the extension of home rule prerogatives statewide. A Colorado Municipalities article published by the Colorado Municipal League (CML) in 1925 identified the following charters as adopted between the 1902 and the 1912 constitutional amendments: Denver (1904), Colorado Springs (1909), Grand Junction (1909), Pueblo (1911), Durango (1912), and Delta (1912).[11]

Subsequent to passage of the amendment in 1902, a great deal of legal and political controversy and turmoil occurred, primarily involving Denver.[12] This caused supporters of home rule to initiate in 1912 a clarifying and strengthening amendment.

The 1912 measure rewrote Section 6 of Article XX to specifically enumerate various municipal home rule powers and included a powerful "catch-all" paragraph:

> *It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.*[13]

Incidentally, the 1912 measure was placed on the ballot by initiative, not referral by the General Assembly. The right of initiative had been made possible by the 1910 voter-approved measure granting initiative and referenda powers to voters statewide.

The 1912 measure also changed the 1902 provision by extending home rule status from cities of the first and second class to any city or town "having a population of two thousand inhabitants." In addition, the measure "ratified, affirmed, and validated" the charters and related elections of Denver, Pueblo, Colorado Springs, Grand Junction, and of any other unnamed city that had adopted a home rule charter. The title of the 1912 initiative just referred to home rule for cities and towns, again not singling out Denver. The 1912 initiative passed by a vote of 49,596 for to 44,778 against.

A common theme of the charters adopted by Colorado Springs, Pueblo, Delta, Durango, and Grand Junction was the adoption of the commission form of government—a popular structure in that era that vested both administrative and legislative authority in a small number of elected officials. Eventually, each city amended its charter to establish the council–manager form. In contrast, Denver's first locally adopted charter of 1904 provided for a mayor–council structure that has evolved into its current strong mayor–council form. Colorado Springs instituted a strong mayor–council form in 2011 and Pueblo followed suit in 2017.

Complaints appearing in the newspapers suggest a variety of systemic problems that drove the home rule movements in these cities. Although efforts to adopt home rule initially were opposed or delayed by some councils and others with political influence, the persistence of those citizens supporting home rule ultimately prevailed.

The prefatory synopsis to Grand Junction's charter stated eloquently in 1909 what supporters of home rule today might repeat:

> *The intent and purpose of this Charter is to establish a free and independent City, so far as the Constitution of the state will permit, their natural, inherent, and inalienable right of local self-government, with all its powers, duties, and responsibilities.*

A third measure affecting home rule was approved in 1950. In 1949, the General Assembly passed HCR 10 that referred the amendment to voters. According to its records, the Colorado Municipal League sponsored the 1949 legislation and

---

[10] Colo. Const. art. XX, §§ 2, 5 (1902) (*amended* 2000) (originally published in Colo. Sess. L. 97-106 (1901)). The primary sources of the Colorado experience discussed above include John A. Rush, The City-County Consolidated 141-150 (1941); Marjorie Hornbein, *Denver's Struggle for Home Rule*, Denv. Mag., Fall 1971, at 345; Jerome C. Smiley, History of Denver (Times-Sun Publ'g Co.) (1901); Clyde Lyndon King, The History of the Government of Denver with Special Reference to its Relations with Public Service Corporations (Fisher Book Co. 1911).

[11] Don C.Sowers, *How to Secure a Home Rule Charter in Colorado*, 1 Colo. Municipalities, Oct. 1925, at 9-10.

[12] Frank Mann Stewart, A Half Century of Municipal Reform: The History of the National Municipal League (University of California Press 1950). For example, much of the controversy after 1902 centered on Denver's authority to perform county functions through officers of its own choosing, and questions about whether state laws or city laws would control municipal elections. *People v. Curtice,* 117 P. 357 (Colo. 1911); *Mauff v. People ex rel Clay,* 123 P. 101 (Colo. 1912).

[13] Colo. Const. art. XX, § 6 (originally published in Colo. Sess. L. 669-671 (1913)).

spearheaded the successful vote in 1950.[14] The 1950 measure amended Section 2 of Article XX relating to compensation of Denver officers and, more important for municipalities statewide, amended Section 5 to allow charter amendments and the question of whether to form a charter convention to be referred to voters by action of the governing body as well as by initiative. Before 1950, charter measures could be initiated only by local voters. It was a cumbersome process, especially when minor changes were needed. The amendment passed by a vote of 145,780 for, to 91,700 against.

Another important home rule amendment was approved by voters in 1970 as part of a local government reform measure referred by the General Assembly in 1969. The home rule portion of the measure was included with the support of CML. It added a new Section 9 to Article XX to extend the right to adopt home rule to the citizens of each municipality, regardless of population or when incorporated, and directed the General Assembly to enact statutory procedures to facilitate the adoption, amendment, and repeal of home rule charters. The referred measure also authorized the General Assembly to enact a more limited "structural" form of home rule for counties.[15] Only Weld County (1976) and Pitkin County (1978) have taken advantage of this form of home rule. The 1970 measure was approved by an overwhelming vote of 325,512 for, to 170,986 against.[16]

The 1970 amendment has enabled many towns with less than 2,000 people to become home rule and led to the CML-drafted Municipal Home Rule Act of 1971, which has remained substantially unchanged since its adoption as the procedure utilized in the adoption and amendment of charters.[17]

There have been other amendments over the years affecting home rule, such as the Taxpayer Bill of Rights (TABOR) in 1992[18] and the Term Limits Amendment in 1994,[19] and a few specialized amendments, including the 1998 amendments to Article XX that created the City and County of Broomfield effective November 15, 2001.[20] As is the case for any other constitutional enactment, the provisions of Article XX and the parameters of home rule authority can be amended or overridden by later enacted constitutional amendments approved at a statewide election.

A PERSPECTIVE ON HOME RULE VERSUS STATE JURISDICTION

Considerable tension has existed and will continue to exist between local and state control. Municipal home rule has not eliminated that tension; however, home rule has established a constitutional relationship between the state and home rule municipalities that has:

- Enabled home rule municipalities to utilize diverse powers, organizations, and procedures without the need for state enabling legislation
- Protected home rule municipalities from state interference in matters local and municipal in nature
- Helped establish and preserve an atmosphere of state respect for local control for other local governments, resulting in fairly broad statutory authority for non-home rule local governments and a certain level of disinclination on the part of state officials to micromanage local governments
- Maintained for state government certain authority to manage and control matters determined to be of statewide or mixed state and local concern.

Preserving home rule authority has, nevertheless, required constant vigilance by CML, municipalities, and other home rule supporters. State officials and legislators, private entities, special interests, and even individuals often have challenged home rule authority in the General Assembly and before the courts. In recent years, legislators have attempted to pass legislation challenging home rule authority, arguing that a subject matter is of state or mixed state–local authority, such as local tax policy, regulation of weapons, employee residency requirements, collective bargaining requirements, breed-specific animal controls, and planning and zoning regulations.

---

[14] J. Glenn Donaldson, *Victory!*, 26 COLO. MUNICIPALITIES, Dec. 1950, at 230, 235; Colo. Mun. League, *Make Home Rule Work*, 26 COLO. MUNICIPALITIES, Aug. 1950, at 153; William A. Grelle, *Legislative Round-Up*, 25 COLO. MUNICIPALITIES, May 1949, at 72. *See also* COLO. CONST. art. XX §§ 2, 5 (1950) (*amended* 2000) (originally published in Colo. Sess. L. 775-776 (1949)).

[15] COLO. CONST. art. XIV, §16.

[16] COLO. CONST. art. XX, § 9 (1970) (*amended* 1985) (originally printed in Colo. Sess. Laws 1247-1251 (1969)).

[17] C.R.S. §§ 31-2-201 to -225. All statutory references refer to the current version of the Colorado Revised Statutes as of the date of publication.

[18] COLO. CONST. art. X, §20.

[19] COLO. CONST. art. XVIII, §18.

[20] COLO. CONST. art. XX, §§10-13.

The first line of defense for home rule municipalities has been to defeat the legislation or delete the pre-emption language where it affected important local interests. This often has been effective.

When legislation pre-empting home rule authority has been enacted, the second line of defense has been the courts. Affected home rule municipalities often have challenged such legislation in the courts and, when necessary, have asserted their home rule powers in other litigation in which their authority to regulate or enforce their laws against private parties has been challenged. CML often has filed *amicus* briefs in support of the home rule position. Only by continuing to defend home rule prerogatives before the General Assembly and the courts on important local control matters can the important principles of home rule be protected.

It should be noted, however, that there may be times when state jurisdiction is viewed as being in the better public interest and there may be other situations in which it may be wise for home rule municipalities to act in concert to preemptively address issues that are or may be of concern to state legislators. For example, CML has coordinated voluntary actions among home rule municipalities on tax administration and simplification, rather than simply relying on home rule prerogatives. Municipal officials need to exercise good judgment and restraint in some circumstances, not always choosing to play the home rule "card."

CONCLUSION

Municipal home rule in Colorado has truly stood the test of time. From its modest birth more than a century ago, it has grown to be utilized in 2022 by 104 cities and towns serving more than 93 percent of the municipal population of the state. Colorado voters statewide have consistently supported municipal home rule by authorizing it in 1902, clarifying and expanding it in 1912, and extending its availability in 1970 to municipalities of all sizes. Moreover, there is no known instance in which local citizens have voted to repeal the home rule status of their municipality.

Home rule does not translate to local control under all circumstances, and it should be expected that the scope of home rule authority will continue to be challenged by the General Assembly and in the courts. Because the very definitions of local and statewide concerns continue to evolve in an ever-growing body of home rule case law, what falls within municipal or state jurisdiction is sometimes in doubt and may always remain in some degree of flux. In addition, constitutional amendments affecting home rule, such as TABOR and term limits, have been and probably will continue to be a significant factor. The continued viability of home rule will depend, as in the past, on the vigilance, assertiveness, and loyalty of municipal officials and others who understand and value local control.

In the final analysis, municipal home rule has immeasurably strengthened local control and facilitated flexibility and diversity in addressing local needs and desires. Home rule also has benefited statutory municipalities and other local governments by paving the way to greater local control and reinforcing a longstanding Colorado ethic favoring local authority to address local problems.

CHAPTER II
HOME RULE POWERS

SOURCES OF POWER TO ACT

The manner of determining whether a municipality has the power to act in a certain area is different for home rule and statutory municipalities. Statutory municipalities must have a specific grant of authority, either from the state constitution or state statutes, in order to act.

A home rule municipality, on matters of local concern, does not need a specific grant of authority from the state to act. The most fundamental expression of home rule authority is found in Article XX, Section 6 of the Colorado Constitution:

> *It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.*

Even after the adoption of a home rule charter, a municipality can continue to exercise the powers delegated to statutory towns and cities by state law. Section 6 also provides: "The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."[21]

LIMITATION ON POWER TO ACT

The powers of home rule municipalities may be limited by their own charters, federal law, the state constitution, court decisions, and at times, legislation enacted by the General Assembly on matters determined to be of legitimate state concern. Obviously, mandates and limitations imposed under the U.S. Constitution and Bill of Rights continue to apply to every local government, regardless of whether the government enjoys home rule status under state law.

Section 8 of Article XX provides that Article XX supersedes all other constitutional provisions. However, several state constitutional provisions have been enacted containing express language or have been interpreted by the courts as superseding home rule powers.[22]

As explained throughout this publication, the state retains the authority to preempt or supersede the laws of a home rule municipality on certain matters deemed to be of statewide concern.

Perhaps the most basic form of limitation on home rule authority is the requirements and strictures of the home rule charter itself. Each charter is both empowering and limiting by its very nature. The courts have often observed that a charter acts as

---

[21] *See also Leek v. City of Golden*, 870 P.2d 580 (Colo. App. 1993); C.R.S. § 31-1-102.

[22] COLO. CONST. art. X, § 17 (originally enacted 1935) (levy of income taxes); COLO. CONST. art. XXV (originally enacted 1955) (regulatory powers over privately owned utilities); COLO. CONST. art. X, § 20 (Taxpayers Bill of Rights); COLO. CONST. art. XVIII, § 11 (originally enacted 1995) (term limits on elected officials); *see also* City & Cnty. of Denver v. Sweet, 329 P.2d 441 (Colo. 1958).

the "constitution" of municipality that adopts it. And just as the federal or state governments cannot adopt any law or take any action that violates the constitution, a home rule municipality cannot adopt an ordinance or take any other action that is inconsistent with their own charter. Colorado courts have regularly been called upon to decide whether a municipal policy or action violates a municipal charter.[23]

MATTERS OF "LOCAL AND MUNICIPAL," "STATEWIDE," AND "MIXED CONCERN"

Home rule municipalities are not limited to exercising only the specific powers mentioned in Article XX or elsewhere in the constitution and state statutes. Instead they have every power essential or proper to the exercise of the right of self-government in local and municipal matters. Thus, the determination of whether a particular matter is one of "local and municipal" concern under Article XX is key to understanding home rule authority at its most powerful.

In court cases challenging the authority of home rule municipalities to act, the courts have created three classifications:

- Matters of local and municipal concern
- Matters of statewide concern
- Matters of mixed statewide and local concern[24]

Matters of Local and Municipal Concern

If a matter is of local and municipal concern and both the state and the municipality have legislation regulating it, the municipal ordinance or charter provision will supersede the state statute if the statute actually conflicts with the ordinance or charter.[25] As Colorado courts have explained it: "Although the legislature retains supreme authority over statewide concerns, municipalities are not inferior to the General Assembly regarding matters of local and municipal concern. . . With respect to purely local and municipal matters, the charter may be, and doubtless is, the paramount law . . . Moreover, in purely local and municipal matters, home rule may exercise exclusive jurisdiction by passing ordinances which supersede state statutes."[26]

Matters of Statewide Concern

Many state statutes include a "declaration of statewide concern" designed to make the statute applicable to home rule municipalities and to prohibit or supersede any conflicting local laws. Rarely, however, do these statutes declare certain subject matter to be solely, purely, or exclusively a matter of state concern, or expressly forbid any municipal regulation at all on a particular subject. If a matter is determined by the courts to be of predominant or exclusive "statewide" concern, a home rule municipality cannot adopt legislation regarding the matter except as specifically provided in the statute,[27] and without such authorization a home rule municipality has no power to adopt legislation relating to a subject of solely "statewide" con-

---

[23] McNichols v. City & Cnty. of Denver, 230 P.2d 591 (Colo. 1950); City & Cnty. of Denver v. Miller, 368 P.2d 982 (Colo. 1962); *Cherry Creek Aviation, Inc. v. City of Steamboat Springs*, 958 P.2d 515 (Colo. App. 1998); City and Cnty. of Denver v. Denver Firefighters Loc. No., 858, 320 P.3d 354 (Colo. 2014); Marshall v. Civ. Serv. Comm'n of the City and Cnty. of Denver, 401 P.3d 96 (Colo. App. 2016); cert. denied (2017); Denver Police Protective Ass'n v. City & Cnty. of Denver, 488 P.3d 319 (Colo. App. 2018), cert. denied (2018); Johnson v. Civ. Serv. Comm'n of the City and Cnty. of Denver, 417 P.3d 963 (Colo. App. 2018); Murr v. City and Cnty. of Denver, 459 P.3d 699 (Colo. App. 2019); City of Boulder v. Pub. Serv. Co. of Colorado, 420 P.3d 289 (Colo. 2018); O'Connell v. City and Cnty. of Denver, 488 P.3d 14 (Colo. App. 2019), cert. denied (2019).

[24] City of Longmont v. Colorado Oil and Gas Ass'n., 369 P.3d 573 (Colo. 2016); Webb v. City of Black Hawk, 788 P.2d 764 (Colo. 2013); City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003); City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002); *City & Cnty. of Denver v. State*, 788 P.2d 764 (Colo. 1990) (hereinafter *Denver v. State*); City & Cnty. of Denver v. Bd. of Cnty. Comm'rs, 782 P.2d 753 (Colo. 1989); Nat'l Adver. Co. v. Dept. of Highways, 751 P.2d 632 (Colo. 1988); City & Cnty. of Denver v. Colo. River Water Conservation Dist., 689 P.2d 730 (Colo. 1985).

[25] Webb v. City of Black Hawk, 788 P.2d 764 (Colo. 2013); City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003); City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002); Denver v. State, 788 P.2d 764 (Colo. 1990); City & Cnty of Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985); Vela v. People, 484 P.2d 1204 (Colo. 1971); Winslow Constr. Co. v. City & Cnty. of Denver, 960 P.2d 685 (Colo. 1998); Fraternal Order of Police v. City & Cnty. of Denver, 926 P.2d 582 (Colo. 1996).

[26] Town of Frisco v. Baum, 90 P.3d 845, 846 (Colo. 2004).

[27] Fraternal Ord. of Police v. City & Cnty. of Denver, 926 P.2d 582 (Colo. 1996); City & Cnty. of Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985).

cern.[28] In most cases, however, even when a statute contains a declaration of statewide concern, a home rule municipality may adopt nonconflicting ordinances, with this authority being most clearcut if the statute expressly permits consistent local regulations.[29] It should be noted, however, that the courts have held that when the matter involves a specific constitutionally granted home rule power, even though the matter may be of statewide concern, the legislature has no power to enact any law that denies the home rule municipality a right specifically granted by the constitution.[30]

Mixed Statewide and Local Concern

In recent decades, the Colorado courts have increasingly recognized that most areas of government regulation implicate both state and local interests. Particularly since the landmark 1990 decision in the case of City and County of Denver v. State of Colorado, discussed below, the overwhelming majority of Colorado Supreme Court decisions on the subject of home rule have concluded that neither the state nor a municipality exercises exclusive control over any particular field of regulation. On subjects of "mixed" statewide and local concern, the home rule municipality has the concurrent power to legislate if the charter or ordinance provision does not conflict with the state.[31]

Prior to 1990, in reaching a conclusion to invalidate an ordinance based on its conflict with a state statute, the courts would sometimes fail to articulate whether it was because the matter was of mixed state and local concern or exclusive statewide concern, when the result would be the same.[32] In modern times, however, the courts have become much more meticulous in clearly articulating whether a regulatory matter touches upon matters of mixed state and local concern, before then proceeding to analyze whether there is a conflict between state and municipal laws.

HOW TO DETERMINE WHETHER A MATTER IS OF LOCAL, STATEWIDE, OR MIXED CONCERN

The Colorado Supreme Court, not the General Assembly, has the power to make the final decision of whether a matter is of local, statewide, or mixed concern.[33] However, the court makes the decision on a case-by-case basis, generally after extensive litigation. So how does a municipal official determine ahead of time whether a home rule municipality has the power to act? There are several sources and guidelines:

- Article XX sets forth specific areas of local and municipal concern.
- Several court decisions have declared matters of local, statewide, or mixed concern.
  See Table "Areas of Local, Statewide, and Mixed Concern Determined by the Courts" (pages 16 to 30).
- The General Assembly has granted numerous powers to statutory municipalities, and a home rule municipality has at least as many powers as a statutory municipality.[34] It is important to remember two issues when looking to state statutes for home rule municipality authority:

  A. The charter may limit what the state statute allows, in which case the charter controls.

  B. The General Assembly may attempt to limit home rule powers by declaring legislation a matter of statewide

---

[28] *See, e.g.*, City & Cnty. of Denver v. Tihen, 235 P. 777 (Colo. 1925) (overruled on other grounds by State Farm Mut. Auto. Ins. Co. v. Temple, 491 P.2d 1371, 1372 (Colo. 1971)).

[29] *See, e.g.*, *Pierce v. City & Cnty. of Denver*, 565 P.2d 1337 (Colo. 1977); *Conrad v. City of Thornton*, 553 P.2d 822 (Colo. 1976).

[30] *City of Thornton v. Farmers Reservoir and Irrigation Co.*, 575 P.2d 382 (Colo. 1978) (the right of eminent domain); Gosliner v. Denver Election Comm'n, 552 P.2d 1010 (Colo. 1976) (elections).

[31] City of Longmont v. Colorado Oil and Gas Ass'n, 369 P.3d 573 (Colo. 2016); *see also* City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003); Town of Telluride v. Lot Thirty-Four Venture, *L.L.C.*, 3 P.3d 30, 37 (Colo. 2000).

[32] *See, e.g.*, Nat'l Adver. Co. v. Dept. of Highways, 751 P.2d 632 (Colo. 1988).

[33] Denver v. State, 788 P.2d 764, n.6 (1977) ("While the statutory declaration is relevant, it is not binding. If the constitutional provisions establishing the right of home rule municipalities to legislate as to their local affairs are to have any meaning, we must look beyond the mere declaration of a state interest and determine whether in fact the interest is present."); *see also, e.g.*, Winslow Constr. Co. v. City & Cnty. of Denver, 960 P.2d 685 (Colo. 1998); Four Cnty. Metro. Cap. Improvement Dist. v. Bd. of Cnty. Comm'rs, 369 P.2d 1204 (1971); City & Cnty. of Denver v. Sweet, 329 P.2d 441 (1958).

[34] Woolverton v. City & Cnty. of Denver, 361 P.2d 982 (Colo. 1961) (overruled on other grounds by *Vela v. People*, 484 P.2d 1204 (1971)); Leek v. City of Golden, 870 P.2d 580 (Colo. App. 1993).

concern. Sometimes the General Assembly will take the extra step of declaring that it intends to occupy an entire field of regulation and thereby preclude any local regulation at all.[35] The court will consider such a declaration; however, the courts are not bound by the declaration. In fact, courts have declared several matters which the General Assembly had declared to be of statewide concern as instead being of predominantly local or mixed concern.[36]

- Federal or state constitutional provisions may limit a home rule municipality's power to act in a specific area. For example, Article X Section 17 of the Colorado Constitution adopted after Article XX has been construed to preempt home rule municipalities from levying an income tax.[37] Similarly, constitutionally imposed tax and spending limits and term limits on elected officials apply equally to home rule municipalities.[38]

- If the issue is a felony under state law, it will likely be considered a matter of statewide concern.39

SUPREME COURT GUIDANCE

In City and County of Denver v. State of Colorado[40] (the 1990 case deciding that the General Assembly could not preempt local employee residency requirements), the Colorado Supreme Court set forth the factors it considers in determining whether a matter is of local, statewide, or mixed concern. The Court emphasized that there was no particular test to be applied in every instance, but it would apply several factors on a case-by-case basis. The Court stated that it balances the relative interests of the state and the home rule municipality, recognizing that every issue may include interests of each.

As articulated in the Denver residency case and later refined by the Colorado Supreme Court, the main factors the Court analyzes to determine whether state or local law prevails in the event of a conflict between the two are these four:

- the need for statewide uniformity of regulation;
- the impact of municipal regulation on persons living outside the municipality;
- historical considerations, i.e., whether a particular matter is traditionally governed by state or local government;
- whether the Colorado Constitution itself expressly commits a matter to state or local regulation.

Since the landmark decision in *Denver v. State*, the appellate courts in Colorado have more or less systematically applied the four factors enumerated in that case to determine whether other matters should be considered of local, mixed, or statewide concern.[41]

Important additional guidance came from the Colorado Supreme Court in a pair of decisions published in 2016 on the subject of "implied" or "field" pre-emption. Sometimes, even when the statutes governing a state regulatory program do not contain an express "declaration of statewide concern," a plaintiff will claim the state has effectively "occupied the field" of regulation,

---

35 One example of a statute in which the General Assembly used the phrase "occupy the field" relates to the current statewide system for issuing concealed handgun permits in Colorado. C.R.S. § 18-12-201 to 216.

36 *See Denver v. State*, 788 P.2d 764 (Colo. 1990) (employee residency requirements); *see also City of Commerce City v. State*, 40 P.3d 1273, 1280 (Colo. 2001) (quoting City & Cnty. of Denver v. Quest Corp., 18 P.3d 748 (Colo. 2001)).

37 City & Cnty. of *Denver v. Sweet*, 329 P.2d 441 (Colo. 1958).

38 COLO. CONST. art. X, § 20 (Taxpayers Bill of Rights); COLO. CONST. art. XVIII, § 11 (term limits on elected officials).

39 City of *Aurora v. Martin*, 507 P.2d 868 (1973); *Quintana v. Edgewater Mun. Ct.*, 498 P.2d 931 (Colo. 1972).

40 *Denver v. State*, 788 P.2d 764 (Colo. 1990).

41 Since its ruling in the Denver residency case, the most prominent examples of the Colorado Supreme Court applying the four-factor test in subsequent home rule cases are these, in reverse chronological order: *City of Longmont v. Colorado Oil and Gas Ass'n*, 369 P.3d 573 (Colo. 2016) (regulation of oil and gas hydraulic fracturing); *Ryals v. City of Englewood*, 364 P.3d 900 (Colo. 2016) (residency restrictions on registered sex offenders); *Webb v. City of Blackhawk*, 295 P.3d 480 (Colo. 2013) (restriction of bicycles on municipal streets); *MDC Holdings Inc. v. Town of Parker*, 223 P.3d 710 (2010) (procedures for appeal of municipal use tax disputes to Colorado Department of Revenue); *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008) (extraterritorial eminent domain authority); *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003) (placement of juvenile sex offenders in foster care in residential neighborhoods); *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002) (deployment of photo-radar for speed enforcement); *City and Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001) (installation of telecommunications facilities in municipal rights-of-way); *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000) (rent control); *Winslow Constr. Co. v. City & Cnty. of Denver*, 960 P.2d 685, 693 (Colo. 1998) (control over municipal sales and use tax base); *Fraternal Ord. of Police v. City & Cnty. of Denver*, 926 P.2d 582, 589 (Colo. 1996) (qualifications for employment of Denver deputy sheriffs); *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061, 1067 (Colo. 1992) (municipal ban on oil and gas drilling); *Walgreen v. Charnes*, 819 P.2d 1039 (Colo. 1991) (appeals of municipal sales and use tax disputes to state courts).

leaving no room for any municipal regulation on the same subject.[42] This is a traditional way of arguing that the courts should determine a particular subject to be a matter of exclusive state concern. This kind of argument especially arises when the state regulatory regime is quite detailed and comprehensive, or when the state has traditionally been the sole or primary regulator on the disputed subject under Colorado law.

In the case of City of Longmont v. Colorado Oil and Gas Association,[43] the Supreme Court ultimately ruled that regulation of oil and gas drilling was a matter of mixed state and local concern in which there is a proper regulatory role for both levels of government. In reaching this conclusion, the court rebuffed the argument that the State of Colorado had entirely occupied the field of regulating oil and gas drilling, thus precluding any municipal regulation whatsoever. Several statements by the court may prove helpful in future litigation where municipal ordinances are challenged under an "implied pre-emption" theory:

> ● *Preemption may be implied when a state statute 'impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest.' A legislative intent to preempt local control over certain activities cannot be inferred, however, merely from the enactment of a state statute addressing certain aspects of those activities. Rather, we must consider the language used and the scope and purpose of the legislative scheme.*[44]

> ● *. . . the General Assembly has recognized the propriety of local land use ordinances that relate to oil and gas development. . . . We are not persuaded otherwise by the Association's argument that preemption may be implied when state law manifests a "sufficiently dominant" state interest. 'Sufficient dominancy is one of the several grounds for implied state preemption of a local ordinance.' A dominant state interest alone, however, does not necessarily evince a legislative intent to exclude any local regulation.*[45]

> ● *. . . we reject the Association's claim that the Commission has the exclusive authority to regulate the technical aspects of oil and gas operations and that such technical regulation constitutes a de facto operational conflict. Nothing in the Oil and Gas Conservation Act evinces a legislative intent to grant the Commission such exclusive authority.*[46]

Earlier in 2016, the Supreme Court touched on another aspect of "implied preemption" theory. In the case of Ryals v. City of Englewood,[47] the Court treated the registration of sex offenders as being a matter of mixed state and local concern, and upheld the authority of the city to impose locational restrictions on where registered offenders could reside. The plaintiff challenging the city law had attempted to argue that, because state laws were silent on any residency restriction, the state had implicitly authorized sex offenders to register anywhere they may claim as their home. In rejecting this argument, the Supreme Court said:

> *Ryals argues that state law 'authorizes' him to live wherever he chooses within the state because no state statute deals with sex offender residency. This argument is unpersuasive. 'Authorization' requires more than legislative silence on an issue. The failure or refusal to prohibit an action does not amount to 'authorization' of that action. If legislative silence amounted to authorization, then it would be virtually impossible for local governments to restrict anything. Ryals's argument thus goes too far. Furthermore, in this case, we have no reason to read legislative silence as implied authorization for sex offenders to live wherever they please. Indeed, the (Sex Offender Management Board) submitted a report to the General Assembly criticizing ordinances like Englewood's, and the legislature took no action in response to it.*[48]

---

[42] *See, e.g.*, City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003) (General Assembly has implicitly occupied the field of placement of juvenile sex offenders in foster care, thereby precluding any local regulation).

[43] City of Longmont v. Colorado Oil and Gas Ass'n, 369 P.3d 573 (Colo. 2016); *see also* City of Fort Collins v. Colorado Oil and Gas Ass'n, 369 P.3d 586 (Colo. 2016). The General Assembly modified Colorado's oil and gas regulatory scheme and confirmed broader authority of local governments in 2019's Senate Bill 181.

[44] City of Longmont v. Colorado Oil and Gas Ass'n, 369 P.3d at 582 (internal citations omitted).

[45] City of Longmont v. Colorado Oil and Gas Ass'n, 369 P.3d at 584 (internal citations omitted).

[46] City of Longmont v. Colorado Oil and Gas Ass'n, 369 P.3d at 584 (internal citations omitted).

[47] Ryals v. City of Englewood, 364 P.3d 900 (Colo. 2016).

[48] Ryals v. City of Lakewood, 364 P.3d at 909 (internal citations omitted).

LOCAL REGULATION IN AREAS OF STATEWIDE OR MIXED CONCERN

Statewide Concern

The fact that a subject has been declared to be of statewide concern and has been recognized as such by the courts does not necessarily mean that a home rule municipality cannot legislate on the subject. The state legislation may specifically leave room for local legislation. For instance, liquor regulation has been declared a matter of statewide concern;[49] however, several liquor statutes specifically allow some local regulation.[50]

Particularly in older case law, before the courts began to heavily rely on the term "mixed concern," the courts would sometimes identify a matter as being of statewide concern but allow a municipal ordinance to coexist with the state statute anyway. In these early court decisions, the court would say there must be a conflict between the state statute and the ordinance for preemption of the local ordinance to occur.[51] The test for determining whether a conflict exists is whether the ordinance authorizes what the statute forbids, or forbids what the statute has expressly authorized.[52] There is no conflict to the extent the municipal ordinance is merely more restrictive than the state statute.[53]

Mixed Concern

In matters of mixed concern, the charter or ordinance of a home rule municipality can coexist with the statute so long as the local ordinance and the state statute do not conflict. In the event of a conflict, the conflicting portion of the charter or ordinance is superseded by the statute.[54] In an area of mixed concern, the Colorado Supreme Court has held that any state preemption must derive from a state statute, and not some other type of state action such as a P.U.C. tariff.[55]

Through the years, the courts have defined the word "conflict" in several different ways, first and foremost asking whether a municipal law authorizes what the state prohibits or prohibits what the state authorizes. But the Supreme Court has also coined the term "operational conflict." In its 2016 decision in City of Longmont v. Colorado Oil and Gas Association, the Court elucidated what this term means:

> *For the sake of clarity and consistency, we will analyze an operational conflict by considering whether the effectuation of a local interest would materially impede or destroy a state interest, recognizing that a local ordinance that authorizes standard, we hasten to add that such an analysis requires us to assess the interplay between the state and local regulatory schemes. In virtually all cases, this analysis will involve a facial evaluation of the respective statutory and regulatory schemes, not a factual inquiry as to the effect of those schemes "on the ground."*[56]

If the home rule municipality decides, on some basis, that it does have the power to legislate on a particular subject, it must still look to its charter for any limitations on the municipality's power to act in the area. If the charter contains a limitation, the municipality must act in accordance with the charter limitation, or its action may be invalid.

---

[49] Kelly v. City of Fort Collins, 431 P.2d 785 (Colo. 1967); People ex rel Carlson v. City & Cnty. of Denver, 153 P. 690 (Colo. 1915).

[50] *See* C.R.S. § 18-13-122(11) (allowing municipalities to regulate underage possession or consumption of alcohol or marijuana, as long as municipal regulations are at least as strict as state regulations); C.R.S. § 44-3-901(1)(i)(VII) (allowing municipalities to define by ordinance public places where consumption of alcohol may be allowed).

[51] Vela v. People, 484 P.2d 1204 (Colo. 1971); DeLong v. City & Cnty. of Denver, 576 P.2d 537 (Colo. 1918).

[52] City of Aurora v. Martin, 507 P.2d 868 (Colo. 1973).

[53] City & Cnty. of Denver v. Howard, 622 P.2d 568 (Colo. 1981); Vela v. People, 484 P.2d 1204 (Colo. 1971); Ray v. City & Cnty. of Denver, 121 P.2d 886 (Colo. 1942).

[54] Denver v. State, 788 P.2d 764 (Colo. 1990); Nat'l Advert. Co. v. Dept. of Highways, 751 P.2d 632 (Colo. 1988); City & Cnty. of Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985); Voss v. Lundvall, 830 P.2d 1061 (Colo. 1992).

[55] U.S. West Commc'ns, Inc. v. City of Longmont, 948 P.2d 509 (Colo. 1997).

[56] City of Longmont v. Colorado Oil and Gas Ass'n, 369 P.3d 573, 583 (Colo. 2016). In this case, some of the parties had argued that the case should be remanded to the trial court for the development of a more robust factual record demonstrating the local reasons for banning fracking as a matter of local concern. However, the Supreme Court emphasized that the conflict analysis simply involves a comparison of what the state and local laws actually say on their face.

ADVANTAGES AND DISADVANTAGES OF HOME RULE

When considering the adoption of a home rule charter, the citizens of each municipality must decide whether home rule would be beneficial, considering the municipality's own needs and problems. Municipal officials should consider or understand the possible advantages and disadvantages of home rule.

Home rule allows flexibility in the exercise of governmental powers. As discussed in the previous section, when a local problem arises, a statutory municipality can look only to the state statutes and a few constitutional provisions for its power or authority to act. If no power has been granted, the municipality must either ignore the problem or ask the state legislature to adopt a statute granting the necessary power. Home rule municipalities, on the other hand, can look both to the state statutes and to the specific and general grants of power found in Article XX of the Colorado Constitution. Thus, where no statutory authority to act exists, home rule municipalities may still have the power to solve their local problems and solve them quickly, without resorting to the state legislature.

If a statute does grant statutory municipalities the power to act, it may additionally require the municipalities to follow certain procedures and other limitations when acting. In other words, the state may control not only the question of whether the municipality has the power to act, but also the question of how that power should be exercised. On the other hand, in matters of local and municipal concern, home rule municipalities are not required to follow procedures outlined in the statutes and thus may shape solutions for local problems to fit local needs.

As an example of the flexibility of home rule power, the following is a partial list of actions that home rule municipalities can take but which statutory municipalities may not pursue or for which statutory authority is doubtful. A home rule municipality may:

- within certain limits, create new tax sources to meet local financial needs;[57]
- provide a method for the simple and expeditious transfer of funds among municipal departments;[58]
- establish its own maximum debt limitations or have no maximum limitation, as it desires;[59]
- establish its own time limitations for the repayment of municipal bonds;[60]
- create its own governmental form and administrative structure, including such matters as the size of its governing body; the powers of elected and appointed officials; terms of office of the members of its governing body and whether they are elected from districts or at-large; quorum and voting requirements; the manner of filling vacancies; the allocation of powers among elected and appointed officials, boards and commissions, and staff;[61]
- establish its own procedures for providing street, sidewalk, and other special improvements;[62]
- establish procedures and dates for municipal elections differing from those established by the statutes, including such matters as regular and special election dates, the dates when elected officials will take office, the creation of an election commission, the procedure for conducting elections, and who may vote in municipal elections;[63]
- establish procedures by which ordinances and resolutions may be adopted, including methods of adopting codes by reference; determining whether actions will be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication, or posting with regard to ordinances; and determination of the effective date of ordinances;[64]

---

[57] Deluxe Theatres, Inc. v. City of Englewood, 596 P.2d 771 (Colo. 1979); Sec. Life and Accident Co. v. Temple, 492 P.2d 63 (Colo. 1972); Farmers Mut. Auto Ins. Co. v. Temple, 491 P.2d 1371 (Colo. 1971); City & Cnty. of Denver v. Duffy Storage & Moving Co., 450 P.2d 339 (Colo. 1969); Berman v. City & Cnty. of Denver, 400 P.2d 434 (Colo. 1965); City of Englewood v. Wright, 364 P.2d 569 (Colo. 1961).

[58] City & Cnty. of Denver v. Blue, 500 P.2d 970 (Colo. 1961).

[59] COLO. CONST. art. XX, § 6(e). Note that the Constitution arguably requires a charter provision because it does not include the customary language, "or an ordinance adopted pursuant to the charter."

[60] Davis v. City of Pueblo, 406 P.2d 671 (Colo. 1965).

[61] COLO. CONST. art. XX, § 6; Evert v. Quren, 549 P.2d 791, 794 (Colo. 1976); C.R.S. § 31-1-102(2).

[62] COLO. CONST. art. XX, § 6(g); County Comm'rs of El Paso Cty. v. City of Colo. Springs, 180 P. 301, 302 (Colo. 1919).

[63] Kingsley v. City & Cnty. of Denver, 247 P.2d 805 (Colo. 1952); Cook v. City of Delta, 64 P.2d 1257 (Colo. 1937); Clough v. City of Colo. Springs, 197 P. 896 (Colo. 1921); Englewood Police Benefit Ass'n. v. City of Englewood, 811 P.2d 464 (Colo. App. 1990); May v. Town of Mountain Vill., 969 P.2d 790 (Colo. App. 1997).

[64] Gosliner v. Denver Election Comm'n, 552 P.2d 1010 (Colo. 1976); Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. App. 1993).

- establish procedures and requirements pertaining to regular and special meetings and executive sessions;[65]
- establish, within certain bounds, municipal court procedures;[66]
- establish, within limits, greater penalties and jail sentences for ordinance violations than those provided for by statute;[67]
- establish procedures for the sale or disposal of public property and the awarding of contracts;[68]
- have available broader powers of eminent domain outside municipal boundaries;[69]
- have available broader and more flexible taxing powers, including the ability to collect, administer, and enforce sales and use taxes and to determine what transactions are subject to or exempt from sales and use taxes; the ability to establish procedures for the adoption, amendment, increase, or decrease of taxes; the authority to levy taxes not available to statutory municipalities, such as lodgers taxes, admissions taxes, real estate transfer taxes, and other excise taxes; and the ability to provide property tax increase limits different from those provided for in the statutes;[70]
- have available broader and more flexible land use, zoning, and planning powers;[71]
- have greater authority over the qualifications of municipal officers and employees;[72] and
- assert legal standing to sue other local governments and to challenge state laws.[73]

The limits of home rule power have not been rigidly established since the municipality's power to act may depend in part on how the subject of legislation is classified, i.e., of local and municipal, statewide, or mixed concern.

Depending upon the particular viewpoint, this lack of definite limits on home rule power may constitute either an advantage or disadvantage of home rule. It may be a disadvantage in the sense that it creates some legal uncertainty when a home rule municipality legislates in a relatively new area. However, it may also be termed an advantage of home rule since the lack of rigid legal boundaries allows home rule municipalities to maintain flexibility when attempting to find new solutions to local problems.

In addition to providing flexibility in the exercise of governmental powers and increasing local control over local problems, home rule places decision-making in the hands of those officials who are closest to the people and makes those officials totally responsible for their decisions. The legislature cannot be blamed for a lack of authority to solve local problems, nor can it be blamed for limiting the choices of solutions to those problems. Thus, the citizens of a home rule municipality may find they have a greater voice and interest in the conduct of municipal affairs.

A home rule charter is legally viewed as a document of limitation; that is, the charter provisions are limitations on the powers granted by the Colorado Constitution to a home rule municipality. If a restrictive home rule charter is adopted, the flexibility offered by home rule may well be lost. It may be preferable to remain a statutory municipality than to be a home rule municipality with a restrictive charter that requires numerous votes of the citizens, establishes restrictive mill levy limits, itemizes the internal administrative organization of the government, contains severe bonding requirements, or intentionally or unintentionally limits the powers of the municipality. Thus, home rule may be either an advantage or disadvantage depending upon the nature of the charter.

One of the threshold problems faced by those municipalities considering the adoption of home rule is its cost. The Municipal Home Rule Act provides that the costs incurred in the process of adopting a home rule charter are to be paid by the

---

65 Gosliner v. Denver Election Comm'n, 552 P.2d 1010 (Colo. 1976); Glenwood Post v. City of Glenwood Springs, 731 P.2d 761 (Colo. App. 1986).

66 C.R.S. § 13-10-103; Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. App. 1993).

67 City of Aurora v. Martin, 507 P.2d 868 (Colo. 1965).

68 Save Cheyenne v. City of Colorado Springs, 425 P.3d 1174 (Colo. App. 2018), cert. denied (2018).

69 Town of Telluride v. San Miguel Valley Corp., 785 P.3d 161, 172 (Colo. 2008); City of Thornton v. Farmers Reservoir and Irrigation Co., 575 P.2d 382 (Colo. 1978); City & Cnty. of Denver v. Bd. of Cnty. Comm'rs of Arapahoe Cnty., 156 P.2d 101 (Colo. 1945); Town of Parker v. Norton, 939 P.2d 535 (Colo. App. 1997). *See* Chapter V.

70 *See* Chapter 2, Table of Areas of Local, Statewide, and Mixed Concern Determined by the Courts.

71 *See* Chapter 2, Table of Areas of Local, Statewide, and Mixed Concern Determined by the Courts.

72 COLO. CONST. art. XX, § 6(a); Fraternal Ord. of Police v. City & Cnty. of Denver, 926 P.2d 582 (Colo. 1996); Denver v. State, 788 P.2d 764 (Colo. 1990); Roybal v. City and County of Denver, 436 P.3d 604 (Colo. App. 2019).

73 City of Greenwood Village v. Petitioners for the Proposed City of Centennial, 3 P.3d 427 (Colo. 2000); City of Northglenn v. Board of County Commissioners of Adams County, 411 P.3d 1139 (Colo. App. 2016), cert. denied (2017).

municipality. Those costs may vary and may include attorney fees and other special consultant fees, expenses incurred in publishing notices of elections and publishing the final charter, services and general supplies for the charter commission, and the expenses of holding special elections. Other than special consultant fees, the highest costs to the municipality may be publication costs and the costs of holding special elections.

Finally, the adoption of a home rule charter does not ensure good local government. The quality of the municipal government will still depend upon the quality of the municipal officials and the degree of interest and concern shown by citizens in their government. Perhaps home rule can be seen as a means of placing the responsibility for the quality of municipal government more firmly in the hands of the municipality's own citizens and officials.

AREAS OF LOCAL, STATEWIDE & MIXED CONCERN, DETERMINED BY THE COURTS

Topic	Area of Concern	Citations
BEER & LIQUOR		
Manufacture, sale and traffic	Statewide concern	**Walker v. People, 135 P. 794 (Colo. 1913)** (state has a concern in regulating liquor traffic) **Big Top v. Schooley, 368 P.2d 201 (Colo. 1962)** (local rulemaking authority does not authorize local limits on the number of licenses to sell fermented malt beverages when inconsistent with state statute on matter of statewide concern) **City of Colorado Springs v. Campbell, 63 P.2d 1244 (Colo. 1936)** (regulation and sale of liquor passed under exclusive control of the General Assembly by virtue of art. XXII, Colo. Const.) **Kelly v. City of Fort Collins, 431 P.2d 785 (Colo. 1967)** (municipality could establish more restrictive selling hours for fermented malt beverages, but authority was derived from legislative delegation of power on matter of statewide concern)
BUSINESS REGULATIONS		
Electrical contractors and electricians, licensing	Statewide concern	**Century Electric Service v. Stone, 564 P .2d 953 (Colo. 1977)** (statewide licensing scheme for electrical contractors and electricians preempted home rule licensing requirements)
Emergency medical care system, ambulance licensing	Mixed concern	**DuHamel v. City of Arvada, 601 P.2d 639 (Colo. App. 1979)** (holding that, although the availability and quality of ambulance service was a matter of local concern, an ordinance providing for ambulance licensing was preempted by state statutory scheme for the provision of a coordinated system of emergency care that vested ambulance licensing authority in counties)
Hospitals, licensing	Mixed concern	**Spears Free Clinic & Hospital v. State Board of Health, 220 P.2d 872 (Colo. 1950)** (generally assembly has a broad right to provide for the licensing of hospitals within the limits of home rule cities despite city's practice of licensing)
Lending, rates charged by small loan companies	Mixed concern	**Ray v. City & County of Denver, 121 P.2d 886 (Colo. 1942)** (by implication) (ordinance a bank from collecting certain fees on small loans in the city was invalid because of direct conflict with the state statute allowing the collection of the fees)
Pawnbrokers	Mixed concern	**Provident Loan Soc. v. City & County of Denver, 172 P. 10 (Colo. 1918)** (municipal ordinance requiring licensing of pawnbrokers did not conflict with statute defining pawnbrokers differently, nor did it interfere with the state's regulation of pawnbroking)
Peddlers	Mixed concern	**McCormick v. City of Montrose, 99 P.2d 969 (Colo. 1940)** (home rule city had authority to define a nuisance and restricting retail solicitations at private residences through the exercise of the police power)

Topic	Area of Concern	Citations
Pesticides, notification of use	Mixed concern	**COPARR v. City of Boulder, 735 F. Supp. 363 (D. Colo. 1989) (aff'd, 942 F.2d 724 (10th Cir. 1991))** (local ordinances regulating pesticide application conflicted with federal or state regulations, but ordinance imposing notification requirements for pesticide use it did not conflict with federal or state notification requirements)
Rent control, affordable housing	Mixed concern	**Town of Telluride v. Lot Thirty-Four Venture L.L.C., 3 P.3d 30 (Colo. 2000)** (viewing issue as "rent control," not "affordable housing," and holding that state rent control prohibition conflicted with ordinance requiring developers to generate affordable housing for employees needed as a result of the development) **C.R.S. § 29-20-104(1)(e.5)**
Sunday closing ordinances	N/A	**Rosenbaum v. City & County of Denver, 81 P.2d 760 (Colo. 1938)** (ordinance requiring automobile dealerships to be closed on Sundays was within the city's police power and did not violate due process or special legislation constitutional provisions)
Telephone companies, regulation	Local concern	**City & County of Denver v. Mountain States Tele. & Tele. Co., 184 P. 604 (Colo. 1919)** (regulating service and rates charged by public utilities for local services is a proper function of municipal government and within a home rule municipality's regulatory powers) **(overruled by People ex rel. Public Utilities Comm'n v. Mountain States Tele. & Tele. Co., 243 P.2d 397 (Colo. 1952))**
Telephone company, regulation of rates	Statewide concern	**People ex rel. Public Utilities Comm'n v. Mountain States Tel. & Tel. Co., 243 P.2d 397 (Colo. 1952)** (overruling prior holding that telephone services and rates within the city were a matter of local concern and that the Public Utilities Commission had jurisdiction to set rates for a telecommunications utility within a home rule municipality. **City of Englewood v. Mountain States Tele. & Tele. Co., 431 P.2d 40 (Colo. 1967)** (holding that a statewide telephone system is a matter of statewide concern because it requires coordinated intra and interstate communications and that a telephone company has the right, under state law, to maintain its facilities and need not obtain local authorization)
Weights and measurements	Mixed concern	**Blackman v. County Court In & For City & County of Denver, 455 P.2d 885 (Colo. 1969)** (local regulation of weights and measures involved statewide concern, but also local concern where commerce was concentrated, and could survive if it did not conflict with state law)
MUNICIPAL IMPROVEMENTS & FACILITIES		
Acquisition of light plants	Local concern	**Cook v. City of Delta, 64 P.2d 1257 (1937)** (home rule municipality had power to acquire a light and power plant and finance the acquisition through revenue bonds)
Auditorium, purchase and construction, bonds	Local concern	**City & County of Denver v. Hallett, 83 P. 1066 (Colo. 1905)** (home rule amendment enlarged powers of home rule municipalities beyond that granted by the legislature and expression of prominent powers conferred on them was not a limited enumeration of powers; charter could provide for the construction of an auditorium, purchase of property, and issuance of bonds to discharge debt)
Capital improvements and equipment	Local concern	**Four-County Metro. Capital Imp. Dist. v. Bd. of Comm'rs of Adams Cnty., 369 P.2d 67 (1962)** (home rule municipality had exclusive local authority to provide for local capital improvements and facilities)

Topic	Area of Concern	Citations
Construction of off-street parking facilities	Local concern	**Four-County Metro. Capital Imp. Dist. v. Bd. of Comm'rs of Adams Cnty., 369 P.2d 67 (1962)** (home rule municipality had exclusive local authority to provide for local capital improvements and facilities)
Interjurisdictional light rail transit system	Mixed concern	**Anema v. Transit Const. Auth., 788 P.2d 1261 (Colo. 1990)** (Transit Construction Authority Act creating authority with power to levy assessment to construct transit system from Denver to Douglas County did not conflict with home rule charter or ordinances and required interjurisdictional cooperation)
Municipal airport	Local concern	**City and County of Denver v. Board of County Commissioners of Arapahoe County, 156 P.2d 101 (1945)** (home rule city not limited by statutory restrictions regarding acquisition, construction, and operation of municipal airports)
Public construction, building materials for county courthouse	Statewide concern	**City & County of Denver v. Bossie, 266 P. 214 (Colo. 1928)** (construction and maintenance of county courthouse by city and county was a a state concern and city and county was obligated to follow state procurement preference for Colorado materials)
Site selection and construction of municipal water facility outside of municipality	Mixed concern	**City & County of Denver v. Board of County Commissioners, 782 P.2d 753 (Colo. 1989)** (home rule city's extraterritorial waterworks projects were subject to county permit regulations under former Land Use Act) **City of Colorado Springs v. Board of County Commissioners of Eagle County, 895 P.2d 1105 (Colo. App. 1994)** (municipalities have a right to construct and maintain extraterritorial water works but must still comply with local permitting process under the Land Use Act.
Waste disposal facility outside of jurisdiction	Mixed concern	**City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982)** (home rule city's solid waste disposal facility located in another county was subject to state regulation because of its effect on the health and environmental quality of people outside of the city)
EMPLOYMENT (SEE ALSO: TAXATION & FINANCE)		
Collective bargaining, requirements and compulsory arbitration		**Greeley Police Union v. City Council of Greeley, 553 P.2d 790 (Colo. 1976)** (suggesting that collective bargaining was a matter of mixed concern and rejecting city's argument that initiated charter amendment providing for collective bargaining involved a matter of statewide concern or conflicted with state law; compulsory binding interest arbitration provisions constituted an unlawful delegation of power under Colo. Const. Art. XXI, § 4) **City of Aurora v. Aurora Firefighters' Protective Ass'n, 566 P.2d 1356 (1977)** (following Greeley Police Union v. City Council of Greeley) **City & County of Denver v. Denver Firefighters Local No. 858, 663 P.2d 1032 (Colo. 1983)** (holding that grievance arbitration was not an unlawful delegation of power under Colo. Const. Art. XXI, § 4) **Fraternal Order of Police, Colorado Lodge No. 19 v. City of Commerce City, 996 P.2d 133 (Colo. 2000)** (holding that compulsory binding arbitration provisions did not constitute an unlawful delegation of power under Colo. Const. Art. XXI, § 4, because arbitrator panel was appointed by elected council through legal process)
Discharge, appeal procedures and standard of review	Local concern	**Ratcliff v. Kite, 541 P.2d 88 (Colo. 1975)** (home rule charter provisions establishing procedures and standard for review of discharge of municipal clerk took precedence over any statutory provision or common law rule)

Topic	Area of Concern	Citations
Disciplinary procedures, sheriff	Local concern	**Roybal v. City and County of Denver, 436 P. 3d 604 (Colo. App. 2019)** (home rule city's disciplinary procedures applicable to manager performing functions of sheriff supersede statutes regarding sheriff's appointment of deputies)
Employee benefits, spousal equivalents	Local concern	**Shaefer v. City & County of Denver, 973 P.2d 717 (Colo. App. 1998)** (home rule municipality had authority to extended health insurance benefits to spousal equivalents as a matter of local concern and ordinance doing so did not infringe on legislative purpose of Uniform Marriage Act)
Employment qualifications, training requirements for deputy sheriffs (POST)	Local concern	**Fraternal Order of Police v. City & County of Denver, 926 P.2d 582 (Colo. 1996)** (home rule municipality's authority to control qualifications of employment, including training and certification, superseded Peace Officer Standards and Training Act requirements as related to deputy sheriffs with limited authority and duties)
Firefighters cancer presumption statute, workers compensation benefits	Statewide concern	**City & County of Denver v. Industrial Claims Office, 328 P.3d 313 (Colo. App. 2014)** (for purposes of the firefighter cancer presumption statute, the determination of the scope of employment as a firefighter was a matter of statewide concern, like workers' compensation benefits) (citing City & County of Denver v. Thomas, 491 P.2d 573 (Colo. 1971)
Labor Peace Act	Statewide concern	**City of Golden v. Ford, 348 P.2d 951 (Colo. 1960)** (home rule municipality's ordinance regulating picketing and other activities relating to labor disputes was preempted by state's Labor Peace Act)
Police and fire pensions	Mixed concern	**Board of Trustees v. People, 203 P.2d 490 (Colo. 1949)** (overruled on other grounds by Police Pension & Relief Board v. McPhail, 338 P.2d 694 (Colo. 1959)) (holding that fire and police pensions have statewide and local interest and that state had occupied the field) **Police Pension & Relief Board v. McPhail, 338 P.2d 694 (Colo. 1959)** (holding that charter amendment eliminating escalation factor for pensions of retired police officers tied to officer wage increases was invalid under Art. II, § 11 of the Colorado Constitution) **Huff v. Mayor of Colorado Springs, 512 P.2d 632 (Colo. 1973)** (firefighter pensions are not exclusively local in nature given statewide interest in fire protection and ordinance affecting firefighter pensions was invalid to extent of conflict with state law) **Conrad v. City of Thornton, 553 P.2d 822 (Colo. 1976)** (home rule city could contract to refund fire and police employee's individual pension contributions upon termination of employment, prior to qualification for pension benefits, in the absence of statutory restriction; recognizing that police and fire pensions are not exclusively a local concern) **City of Colorado Springs v. State of Colorado, 626 P.2d 1122** (Colo. 1981) (statutory requirement that city fund pension plan's unfunded accrued liabilities was invalid under Art. XV, § 12 of the Colorado Constitution as a new liability for past considerations, but that city could be required to fund prospective annual service costs)
Retirement of city employees	Local concern	**Coopersmith v. City & County of Denver, 399 P.2d 943 (Colo. 1965)** (mandatory retirement age ordinance involved a question of tenure that was within home rule municipality's authority and not preempted by state firefighter pension regulations)
Residency requirements	Local concern	**City & County of Denver v. State of Colorado, 788 P.2d 764 (Colo. 1990)** (statute forbidding residency requirements for municipal employment superseded by home rule municipal charter provision that imposed requirement)

Topic	Area of Concern	Citations
Restriction of labor hours, public works	Statewide concern	**Keefe v. People, 87 P. 791 (Colo. 1906)** (statute restricting hours of work on public works projects was applicable to home rule municipality)
Unemployment compensation	Statewide concern	**City of Colorado Springs v. Industrial Commission, 749 P.2d 412 (Colo. 1988)** (determination of entitlement to unemployment compensation benefits is a matter of statewide concern, despite local interest in determining whether employee should be reinstated)
ENVIRONMENT (SEE ALSO: LAND USE & REAL PROPERTY)		
Pesticides, notification of use	Mixed concern	**COPARR v. City of Boulder, 735 F. Supp. 363 (D. Colo. 1989) (aff'd, 942 F.2d 724 (10th Cir. 1991))** (local ordinances regulating pesticide application conflicted with federal or state regulations, but ordinance imposing notification requirements for pesticide use it did not conflict with federal or state notification requirements) **C.R.S. § 35-10-112(3)**
LAND USE & REAL PROPERTY		
Annexation		**City of Greenwood Village v. Petitioners for the Proposed City of Centennial, 3 P.3d 427 (Colo. 2000)** (Municipal Annexation Act addressed a matter of statewide concern relating to management of urban growth and municipal boundaries)
Common interest communities	Mixed concern	**Town of Vail v. Village Inn Plaza-Phase v. Condominium Association, 498 P.3d 1123 (Colo. App. 2021) (cert. denied (2022))** (considering the regulation of common interest communities as an issue of mixed concern and finding that home rule municipality's special development district ordinance imposing special conditions on condominium developments conflicted with later-enacted anti-discrimination provision of Colorado Common Interest Ownership Act)
Eminent domain, exercise of power	Local concern	**Fishel v. City and County of Denver, 108 P.2d 236 (Colo. 1940)** (Art. XX delegated home rule municipality with full power to exercise the right of eminent domain to effect any lawful, public, local and municipal purpose) **City and County of Denver v. Board of County Commissioners of Arapahoe County, 156 P.2d 101 (1945)** (general rule against condemning public property for another public use, exceptional circumstances could justify home rule city condemnation of county roads for airport) **City of Thornton v. Farmers Reservoir & Irrigation Co., 575 P.2d 382 (Colo. 1978)** (home rule city had the full power to exercise the right of eminent domain for a lawful, public purpose after it makes a determination of necessity; charter provision that right be exercised "as provided by law" did not limit city to state statutes; portions of Water Rights Condemnation Act held unconstitutional as applied to home rule municipality) **Town of Telluride v. San Miguel Velley Corp., 185 P.3d 161 (Colo. 2008)** (home rule town's eminent domain authority included extraterritorial condemnation for parks and open space and Art. XX did not create separate classes of eminent domain authority based on location; statute prohibiting extraterritorial condemnation held unconstitutional as to home rule municipalities) **Town of Parker v. Norton, 939 P.2d 535 (Colo. App. 1997)** (the Colorado Recreational Trails System Act of 1971 did not grant additional eminent domain authority but did not restrict home rule town's independent eminent domain powers)

Topic	Area of Concern	Citations
Oil and gas	Mixed concern	**Voss v. Lundvall, 830 P.2d 1061 (Colo. 1992) (modified by City of Longmont v. Colorado Oil & Gas Association, 369 P.3d 573 (Colo. 2016))** (although local government had authority to enact land use regulations affecting oil and gas development, home rule city's ordinance completely banning the development of oil and gas resources within the city was preempted by state's interest in efficient oil and gas development and production throughout the state, as manifested in the Oil and Gas Conservation Act (before 2019 amendments)) **City of Longmont v. Colorado Oil & Gas Association, 369 P.3d 573 (Colo. 2016)** (initiated charter provision banning hydraulic fracturing and storage and disposal of related waste within city limits addressed matter of mixed concern and, through operational effect, materially impeded the Oil and Gas Conservation Act (before 2019 amendments)) **City of Fort Collins v. Colorado Oil & Gas Association, 369 P.3d 586 (Colo. 2016)** (initiated five-year hydraulic fracturing moratorium addressed matter of mixed concern and, through operational effect, materially impeded the Oil and Gas Conservation Act (before 2019 amendments) by rendering statutory and regulatory schemes superfluous)
Outdoor advertising devices along roads of the state highway system	Mixed concern	**National Advertising Co. v. Dept. of Highways, 751 P.2d 632 (Colo. 1988)** (despite city's authority to enact sign code and the recognition of land use as an area of local concern, statute allowing outdoor advertising on state highway system within municipality superseded conflicting local sign code) **City of Fort Collins v. Root Outdoor Advertising CO., 788 P.2d 149 (Colo. 1990)** (ordinance requiring removal or conformity of off-premises signs without compensation held invalid to the extent of conflict with Colorado Outdoor Advertising Act outdoor advertising signs, but city could require removal if compensation was provided)
Preservation of value of city property, standing	Local concern	**Board of County Commissioners of Adams County v. City of Thornton, 629 P.2d 605 (Colo. 1981)** (home rule municipality had standing to challenge county rezoning to preserve the value of city properly, which was "incident of the City's express constitutional powers to hold and enjoy property")
Regulation of telecommunications industry	Mixed concern	**City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001)** (ordinance requiring telecommunications providers to obtain a private use permit before occupying or using public rights-of-way conflicted with statute granting telecommunications providers a right to occupy public rights-of-way without additional authorization or a franchise from local municipalities)
Sale of real property	Local concern	**Stinson v. City of Craig, 202 F.3d 283 (10th Cir. 1999)** (a home rule charter granting the municipality power to purchase, receive, hold and enjoy, or sell and dispose of, real and personal property superseded statute that required an ordinance to sell property; where not superseded by a conflicting charter or ordinance, state statutes regarding matter of local concern would apply to home rule cities)
Sex offender residency	Statewide or mixed concern	**City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003)** (home rule city's ordinance restricting sex offenders from residing together in a single-family residence was preempted by state's regulations on a matter of statewide concern: adjudicated delinquent children in state-created foster care families) **Ryals v. City of Englewood, 364 P.3d 900 (Colo. 2016)** (home rule city's zoning ordinances effectively prohibiting registered sex offenders from residing in the municipality did not conflict with state law regulating sex offenders in area of mixed concern)

Topic	Area of Concern	Citations
Urban renewal, slum clearance, housing standards	Mixed concern	**People ex rel. Stokes v. Newton, 101 P.2d 21 (Colo. 1941)** (enactment of state laws regarding municipal slum clearance and housing projects promotes the general welfare of the state and govern if a home rule city has exercised no such authority) **Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374 (Colo. 1980)** (bond issuance under urban renewal law did not conflict with home rule charter debt limitation because financing made use of revenue that would not have been otherwise available to city and bond obligations bound urban renewal authority and not city; authority's financing was not an unconstitutional pledge of credit or donation in aid of private or public entities or persons; urban renewal law did not improperly delegate authority or interfere in municipal affairs, given requirement for city to approve urban renewal plan) **City of Aurora v. Scott, 410 P.3d 720 (Colo. App. 2017)** (city's inclusion of delay to start date of tax increment financing in urban renewal plan conflicted with urban renew law's provisions regarding the effective date of such provisions)
Zoning, generally	Local concern	**Averch v. City & County of Denver, 242 P. 47 (Colo. 1925)** (holding that zoning ordinance was within constitutional authority of home rule city to provide for public health and safety, rejecting claim that zoning ordinance was special legislation or deprived landowner of property, and rejecting claim of estoppel against city for building inspector's issuance of permit without city council approval) **Roosevelt v. City of Englewood, 492 P.2d 65 (Colo. 1971)** (holding that zoning is a matter of local concern, that statutory voting requirements did not apply in home rule city with contrary requirements, and that council did not act arbitrarily or capriciously in rezoning property) **Moore v. City of Boulder, 484 P.2d 134 (Colo. App. 1971)** (zoning ordinance aimed at establishing low-cost housing in specific area addressed a matter of local concern and authority to enact zoning ordinance of such type and content was not derived from statute) **Service Oil Co. v. Rhodus, 500 P.2d 807 (Colo. 1972) (overruled on other grounds by Hartley v. Colorado Springs, 764 P.2d 1216 (Colo. 1988))** (following Roosevelt v. City of Englewood to recognize that zoning is a local and municipal matter and that such power includes necessarily implied powers, such as the power to terminate non-conforming uses) **City of Greeley v. Ells, 527 P.2d 538 (Colo. 1974)** (holding that zoning was a matter of local concern and that city had power to limit landowner's enlargement of nonconforming uses, which predated the zoning law) **Veterans of Foreign Wars, Post 4264 v. City of Steamboat Springs, 575 P.2d 835 (Colo. 1978)** (within First Amendment analysis, holding that sign code regulation was within home rule municipality's police power authority and fell under zoning authority as a matter of local concern) **City of Colorado Springs v. Smartt, 620 P.2d 1060 (Colo. 1980)** (home rule city's zoning policies and authority are governed by its own charter and ordinances, as applied to rezoning conditions) **Zavala v. City & County of Denver, 759 P.2d 664 (Colo. 1988)** (home rule municipality's zoning authority included broad legislative direction to determine how best to achieve declared municipal objections)

MUNICIPAL COURTS (SEE ALSO: PUBLIC SAFETY; TRAFFIC REGULATIONS)

Judges, procedures for appointment and compensation	Local concern	**People, by and on Behalf of People of City of Thornton v. Horan, 556 P.2d 1217 (Colo. 1976)** (statutes regarding tenure of municipal judges recognize the authority of home rule municipalities to specify the terms under which municipal judges hold office)

Topic	Area of Concern	Citations
Jurisdiction, civil claims for damages, writs		**City of Englewood v. Parkinson, 703 P.2d 626 (Colo. App. 1985)** (cert. denied (1985)) (rejecting municipal judge's claims against city for attorneys fees occurred in challenging ordinance, where jurisdictional provisions of home rule charter did not provide jurisdiction to hear original or remedial writs or decide civil claims for money)
Jurisdiction over civil matters arising under local law	Local concern	**Blackman v. County Court In & For City & County of Denver, 455 P.2d 885 (Colo. 1969)** (home rule city and county could vest county court with jurisdiction to hear cases arising under charter and ordinances) **Town of Frisco v. Baum, 90 P.3d 845 (Colo. 2004)** (charter provision provided "exclusive original jurisdiction over all matters" arising under town's charter and laws home was valid under unmistakable constitutional authority to create and define and exercise the jurisdiction of municipal courts as to matters of local and municipal concern and deprived district court of jurisdiction; challenge to land use decision could be required to be filed in municipal court) **North Avenue Center, L.L.C. v. City of Grand Junction, 140 P.3d 308 (Colo. App. 2006)** (charter provision providing municipal court jurisdiction over causes arising from city ordinances "for a violation thereof" did not provide jurisdiction to hear appeal of variance request denial that did not involve violation of ordinance) **Burger Investments v. City of Littleton, 463 P.3d 303 (Colo. App. 2019) (cert. denied (2020))** (charter provision providing municipal court jurisdiction over "all violations of the Charter and the ordinances of the City" construed to limit jurisdiction to criminal cases; municipal court lacked jurisdiction over challenge to land use decision)
Jury trial in petty offense cases	Statewide concern	**Hardamon v. Municipal Court of the City of Boulder, 497 P.2d 1000 (Colo. 1972)** (home rule authority regarding municipal courts was "limited in scope to those aspects of court organization and operation which are local and municipal in nature and does not empower home rule cities to deny substantive rights conferred upon all of the citizens of the state by the general assembly," included right to jury trial for petty offenses)
Juvenile prosecution	Mixed concern	**R.E.N. v. City of Colorado Springs, 823 P.2d 1359 (Colo. 1992)** (no conflict existed between municipal ordinance regarding prosecution of juveniles because the Children's Code did not include municipal courts)
Procedure, ordinances with a state criminal counterpart		**City of Canon City v. Merris, 323 P.2d 614 (Colo. 1958)** (home rule ordinance regarding driving under the influence was required to be prosecuted as a criminal offense because of statute making such conduct a crime) **Zerobnick v. City & County of Denver, 337 P.2d 11 (Colo. 1959)** (although municipality had authority for a vagrancy ordinance, it was the counterpart of a state criminal statute and all procedural and constitutional protections applicable to criminal cases still applied) **City of Greenwood Village on Behalf of State v. Fleming, 643 P.2d 511 (Colo. 1982)** (home rule ordinance designating speeding as a civil offense where statute designated conduct as criminal violated Art. XX, § 6 of the Colorado Constitution)
State court appellate jurisdiction	Statewide concern	**City & County of Denver v. Bridwell, 224 P.2d 217 (Colo. 1950)** (home rule municipality could not vest appellate powers in state courts without legislative authorization)

Topic	Area of Concern	Citations
MUNICIPAL ELECTIONS		
Campaign finance disclosure violations		**In re the complaint filed by the City of Colorado Springs and concerning the Colorado Ethics Watch, 227 P.3d 937 (Colo. App. 2012)** (home rule city that enacted its own campaign finance ordinances was exempt from Art. XXCIII of the Colorado Constitution and Fair Campaign Practices Act, and could not require state agency to enforce its ordinance despite incorporation of state law)
Municipal elections	Local concern	**People ex rel. Tate v. Prevost, 134 P. 129 (Colo. 1913)** (municipal elections were declared by the people as local and municipal matters by virtue of home rule amendment) **Gosliner v. Denver Election Commission, 552 P.2d 1010 (Colo. 1976)** ("legislature cannot divest a home rule city of its plenary power to deal with municipal elections" and election commission created by home rule municipality was not subject to open meetings law) **Englewood Police Benefits Ass'n v. City of Englewood, 811 P.2d 464 (Colo. App. 1990)** (home rule charter unambiguously prohibiting special elections 45 days before or after general election still permitted a special election on the same day as a general election as issue was not expressly prohibited by charter)
Single subject rule, charter amendments	Local concern	**Bruce v. City of Colorado Springs, 252 P.3d 30 (Colo. App. 2010)** (home rule city acted within its authority under Art. V, § 1(9) and Art. XX of the Colorado Constitution to establish single-subject rule for charter amendment proposals) **McCarville v. City of Colorado Springs, 338 P.3d 1033 (Colo. App. 2013)** (home rule city's ordinance pertaining to initiated charter amendments did not conflict with statutory provisions concerning charter amendments) **Colorado Springs Citizens for Community Rights v. City of Colorado Springs, 360 P.3d 271 (Colo. App. 2015)** (home rule city's single-subject rule for charter amendment proposals did not violate city charter or limit citizen's power to amend the charter)
Voter qualifications	Local concern	**May v. Town of Mountain Village, 969 P.2d 790 (Colo. Ct. App. 1998)** (home rule charter granting non-resident property owners the right to vote in municipal elections was within town's powers)
PUBLIC SAFETY (SEE ALSO: MUNICIPAL COURTS; TRAFFIC REGULATIONS)		
Animals at large, impoundment and fees	Local concern	**City of Pueblo v. Kurtz, 182 P.884 (Colo. 1919)** (home rule municipality had the power to impound stray animals and impose related fees "from time immemorial" as a matter of local concern)
Assault and battery	Mixed concern	**City of Aurora v. Martin, 507 P.2d 868 (Colo. 1973)** (state assault and battery statute expressed no intent to preempt this area of regulation and a difference in penalty provisions, other than for felony offenses, did not create a substantive conflict with municipal ordinance governing same conduct)
Fire protection		**Huff v. Mayor and City Council of City of Colorado Springs, 512 P.2d 632 (Colo. 1973)** (in dicta, stating that "fire protection" is a matter of statewide concern to find that firefighter pensions are not exclusively local)
Gambling	Mixed concern	**Woolverton v. City & County of Denver, 361 P.2d 982 (Colo. 1961)** (upholding municipal ordinance suppressing gambling when the state did not assert authority over gambling in such a manner as to preclude municipal regulation) (limited in Vela v. People, 484 P.2d 1204 (Colo. 1971) (overruling dicta that on matters of local concern, ordinances apply to the exclusion of state statutes even when there is no conflict)

Topic	Area of Concern	Citations
Interference with a police officer	Mixed concern	**City & County of Denver v. Howard, 622 P.2d 568 (Colo. 1981)** (municipal code prohibiting interference with a police officer that was broader and more inclusive than statute governing obstruction of a police officer upheld because it did not prohibit conduct that the state statute explicitly authorized)
Larceny	Statewide concern	**Gazotti v. City & County of Denver, 352 P.2d 963 (Colo. 1960)** (home rule ordinance criminalizing larceny on broader terms than state statute defining misdemeanor offense was preempted)
Leaving the scene of an accident	Statewide concern	**People v. Graham, 110 P.2d 256 (Colo. 1941)** (municipal ordinance penalizing driver for failing to stop after an accident was not a violation of regulations of motor vehicle traffic of local and municipal nature, over which home-rule city had exclusive jurisdiction, but were under general police power of state)
Obscenity	Statewide concern	**Pierce v. City & County of Denver, 565 P.2d 1337 (Colo. 1977)** (home rule municipal ordinance broadly regulating obscenity was invalidated because of conflict with the statewide "community standard" required for determining whether material is obscene)
Pawnbrokers	Mixed concern	**Provident Loan Soc. v. City & County of Denver, 172 P. 10 (Colo. 1918)** (municipal ordinance requiring licensing of pawnbrokers did not conflict with statute defining pawnbrokers differently, nor did it interfere with the state's regulation of pawnbroking)
Police duties	Mixed concern	**Police Protective Association v. Warren, 76 P.2d 94 (Colo. 1938)** (tax to benefit police pension fund was subject to legislative control because, while duties of police officers were primarily local, police also served state purpose)
Resistance to unlawful arrest	Statewide concern	**Bennion v. City and County of Denver, 504 P.2d 350 (Colo. 1972)** (home rule ordinance prohibiting resist`ance to unlawful arrest was invalid where such conduct was expressly allowed by then-existing statute governing area of statewide interest)
Shoplifting, petty theft	Statewide concern	**Quintana v. Edgewater Municipal Court, 498 P.2d 931 (Colo. 1972)** (home rule ordinance criminalizing shoplifting of articles having a value in excess of $100 encroached on felony jurisdiction of district court; however, shoplifting articles of a lesser value is a matter of mixed concern and is properly regulated by municipal ordinance)
Vagrancy	Local concern	**Dominguez v. City & County of Denver, 363 P.2d 661 (Colo. 1961)** (because vagrancy is a problem in populous areas, the City and County of Denver had the authority to adopt an ordinance to address that local issue; the court did not analyze whether there was a conflict with state law) (overruled by Arnold v. Denver, 464 P.2d 515 (Colo. 1970) (vagrancy ordinance was overbroad and vague as the status of being a vagrant alone cannot be penalized)

Topic	Area of Concern	Citations
RAILROADS (SEE ALSO: UTILITIES)		
Railroad crossings, closures & safety	Mixed concern	**City of Craig v. Public Utilities Comm'n, 656 P .2d 1313 (Colo. 1983)** (holding that home rule city lacked authority to override decision of the PUC to close railroad crossings, despite city's legitimate interest in crossing safety)
Railroad viaducts, construction and apportionment of cost	Mixed concern	**Denver & Rio Grande Western Railroad Co. v. City & County of Denver, 673 P.2d 354 (Colo. 1983)** (home rule municipality's grant of authority to regulate the construction of and apportionment of costs for railroad viaducts within the municipality was preempted by conflict with grant of jurisdiction to Public Utilities Commission)
TAXATION & FINANCE		
Admissions taxes	Local concern	**Deluxe Theatres, Inc. v. City of Englewood, 596 P.2d 771 (Colo. 1979)** (tax on admissions to public places and events by a home rule city is a valid excise tax imposed on privileges and occupations within the municipal limits and was within authority of home rule municipality to adopt) **City of Boulder v. Regents of University of Colorado, 501 P.2d 123 (Colo. 1972)** (home rule ordinance that mandated an excise tax on certain types of events was valid, but collection requirements interfered with constitutional authority of state-run university and tax could not be imposed on access to state educational functions)
Assessment against property for local improvements	Local concern	**Board of Commissioners of El Paso County v. City of Colorado Springs, 180 P. 301 (Colo. 1919)** (home rule municipalities have the right to levy special improvement taxes against county property situated in the municipality pursuant to their charter)
Authority, sales and use taxes	Local concern	**Berman v. City & County of Denver, 400 P.2d 434 (Colo. 1965)** (sales and use tax ordinances were within home rule city's authority and were a matter of local concern because they were adopted to raise revenue to conduct city affairs, render services, and provide facilities for use by residents and non-residents alike) **Security Life and Accident Co. v. Temple, 492 P.2d 63 (Colo. 1972)** (home rule municipalities have "complete autonomy" in enacting purely local excises taxes and sales taxes and cannot be eroded by statewide, national, or international scope of businesses taxed; statutory effort to limit authority was invalid) **Winslow Constr. Co. v. City and County of Denver, 960 P.2d 685 (Colo. 1998)** (home rule municipality's use tax was proper excise of local authority and not subject to time limitations of similar state tax, despite state's interest in free flow of commerce and preventing multiple taxation)
Budgeting of anticipated revenue	Local concern	**City & County of Denver v. Blue, 500 P.2d 970 (Colo. 1972)** (in dispute over local budget process, stating that budgeting of anticipated revenue for the operation of city government is strictly a matter of local and municipal concern)
Collection of charges for utility services, delinquent charges, liens		**City of Craig v. Hammat, 809 P.2d 1034 (Colo. App. 1990)** (home rule ordinance authorizing the collection of utility service charges through the imposition of a lien, in the same manner as taxes, did not conflict with statutes) **Sant v. Stephens, 753 P.2d 752 (Colo. 1988)** (home rule municipalities have the power to enact ordinances creating liens with rights of redemption, including liens for unpaid utility services, and the ordinance in question did not conflict with state law)

Topic	Area of Concern	Citations
Financing, capital improvements	Local concern	**Berman v. City & County of Denver, 400 P.2d 434 (Colo. 1965)** (financing of a program of capital improvements is a matter of local and municipal concern not limited by now-repealed Colo. Const. art. XI, § 8) (as characterized by Davis v. Pueblo, 406 P.2d 671 (Colo. 1965)
Issuance of bonds, buying land for donation to the United States for airfield & employment relief	Local concern	**McNichols v. City & County of Denver, 74 P.2d 99 (Colo. 1937)** (home rule municipality's issuance of bonds to buy land to donate to federal government for airfield was for a valid and strictly local and municipal purpose, including as unemployment relief effort)
Income taxation	Statewide concern	**City & County of Denver v. Sweet, 329 P.2d 441 (Colo. 1958)** (home rule municipality lacked power to impose an income tax on its residents or call a special election for purposes of imposing an income tax because Colo. Const. Art. X, § 17 preempted the field of income taxation for the general assembly) **Mountain States Telephone & Telegraph Co. v. City of Colorado Springs, 572 P.2d 834 (Colo. 1977)** (municipal occupation tax tied to gross revenue of business is considered an income tax and is outside of the scope of a home rule municipality's power)
Non-profit cemeteries, taxation and assessment		**City & County of Denver v. Tihen, 235 P. 777 (Colo. 1925)** (statutory extension of constitutional property tax exemption for non-profit cemeteries applied to municipal assessment) (overruled by State Farm Mutual v. Temple, 491 P.2d 1371 (Colo. 1971)) (overruling Tihen for proposition that the matter of assessment for local improvement districts is of statewide concern)
Occupation tax	Local concern	**Post v. City of Grand Junction, 195 P.2d 958 (Colo. 1948)** (ordinance imposing occupational excise tax on the business of selling liquor did not conflict with constitutional provisions giving the state control over liquor regulation and tax revenue) **City & County of Denver v. Duffy Storage & Moving Co., 450 P.2d 339 (Colo. 1969)** (the general assembly has exclusive non-delegable power to levy income taxes, but home rule municipalities can, pursuant to ordinance, impose a business occupational privilege tax and employee occupational privilege tax) **Hamilton v. City & County of Denver, 490 P.2d 1289 (Colo. 1971)** (municipal occupation tax's application to state officials and employees working within the municipality did not interfere with their employment by the state and did not conflict with Colo. Const. Art. XII, § 13) **State Farm Mutual v. Temple, 491 P.2d 1371 (Colo. 1971)** (home rule charter imposing a business occupational privilege tax for purposes of raising revenue supersedes state statute prohibiting local taxes on insurance companies)
Taxpayer appeals	Statewide concern	**Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982)** (municipal code requirement to challenge tax assessment within 20 days by verified petition was invalid due to conflict with state standard for review under CRCP 106(b) that provided for 30 days and did not require a verified petition) **Walgreen Co. v. Charmes, 819 P.2d 1039 (Colo. 1991)** (procedure for locally appeals from imposed sales or use taxes is subject to state regulation, in light of preference for uniform statewide access to state courts) **MDC Holdings, Inc. v. Town of Parker, 223 P.3d 710 (Colo. 2010)** (a town code provision that required plaintiff to seek a formal hearing following the informal hearing before they could exercise the right of appeal was invalid because it required more than the state statute, which only required an informal hearing)
Taxation of gasoline, streets and highways of home rule city	Statewide concern	**People v. City & County of Denver, 10 P.2d 1106 (Colo. 1932)** (state tax on gasoline applied to gasoline purchased by municipality for use in public vehicles on city streets)

Topic	Area of Concern	Citations
Transportation authority, taxing powers	Mixed concern	**Wal-Mart Stores, Inc. v. Pikes Peak Rural Transportation Authority, 434 P.3d 725 (Colo. App. 2018) (cert. denied (2019))** (provision of transportation services and imposition of taxes to pay for services was not of purely local concern and authority's tax did not conflict with home rule municipality's right of taxation)
TRAFFIC REGULATIONS (SEE ALSO: MUNICIPAL COURTS; PUBLIC SAFETY)		
Automated vehicle identification systems, intersections	Mixed concern	**City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002)** (characterizing the regulation of automated vehicle identification systems as one of mixed concern, despite traditional recognition of traffic ordinances and municipal court operations as areas of local concern, and finding that statute superseded local ordinances regarding red light and speeding cameras)
Bicycle traffic	Mixed concern	**Webb v. City of Black Hawk, 295 P.3d 480 (Colo. 2013)** (home rule municipality's ordinance prohibiting bicycles on city streets addressed matter of mixed concern and conflicted with state law that authorized such a prohibition only if bike paths were provided)
Careless and reckless driving	Local concern	**Retallack v. City of Colorado Springs, 351 P.2d 884 (Colo. 1960)** (upholding home rule ordinance penalizing reckless driving because standard was "a relative thing" that "is wholly dependent upon so many variable and local circumstances that conviction thereof could not have uniform application throughout the state") **People ex rel. City of Aurora v. Thompson, 437 P.2d 537 (Colo. 1968)** (home rule ordinance penalizing careless and reckless driving superseded statute)
Driving with suspended or revoked license	Statewide concern	**City & County of Denver v. Palmer, 342 P.2d 687 (Colo. 1959) and Davis v. City & County of Denver, 342 P.2d 674 (Colo. 1959)** (concluding that home rule municipality was preempted from regulating act of driving without a license because statute did not delegate or consent to local regulation; municipal ordinance also conflicted by imposing lesser sentence than statute)
Driving under the influence	Statewide concern	**City of Canon City v. Merris, 323 P.2d 614 (Colo. 1958)** (in dicta, holding that home rule ordinance regarding driving under the influence of intoxicating liquor addresses matter of statewide concern and that speed, right of way, parking, designation of one-way streets, and similar regulatory measures are of local concern) **(limited in Vela v. People, 484 P.2d 1204 (Colo. 1971))** (overruling dicta that state law and ordinance are mutually exclusive on matters of local concern even when there is no conflict)
Motor vehicle accidents, duties of drivers	Statewide concern	**People v. Graham, 110 P.2d 256 (Colo. 1941)** (statutes applicable to drivers involved in accidents were within the general police power of the statute and did not relate to the regulation of motor vehicle traffic of a local nature)
Speeds on municipal streets	Local concern	**Wiggins v. McAuliffe, 356 P.2d 487 (Colo. 1960)** (municipal ordinance establishing violation for speeding on city streets was matter solely of local and municipal concern not preempted by state statute on same subject) **People v. Hizhniak, 579 P.2d 1131 (Colo. 1978)** (home rule municipality was entitled to impose a jail sentence for a violation of a local speeding ordinance affecting city streets, despite more lenient state law on same subject)
Street intersections, right of way	Local concern	**City & County of Denver v. Henry, 38 P.2d 895 (Colo. 1934)** ("there seems no escape from the conclusion that the regulation of traffic at street intersections in the city of Denver is primarily a matter of local concern because proper regulation is almost wholly dependent upon local conditions")

Topic	Area of Concern	Citations
Unauthorized parking, private property	Local concern	**Lehman v. City & County of Denver, 355 P.2d 309 (Colo. 1960)** (home rule municipality had authority to address parking of vehicles on private property)
UTILITIES (SEE ALSO: RAILROADS)		
General regulation of public utilities (non-municipal)	Statewide concern	**Colorado Constitution Article XV**
Mass transportation system within municipal limits	Local concern	**Durango Transportation, Inc. v. City of Durango, 807 P.2d 1152 (Colo. 1991)** (county, as municipality, was exempt from Public Utilities Commission regulation in its operation of transit system within county)
Mass transit system outside territorial limits	Mixed concern	**City & County of Denver v. Public Utilities Commission, 507 P.2d 871 (Colo. 1973)** (home rule municipality's operation of mass transit system outside of municipal boundaries was subject to the jurisdiction of the Public Utilities Commission)
Regulation of utilities serving in areas of local concern	Mixed concern	**Zelinger v. Public Service Co. of Colo., 435 P.2d 412 (Colo. 1967)** (home charter amendment could validly delegate regulatory jurisdiction to Public Utilities Commission)
Relocation of public utilities		**City & County of Denver v. Mountain States Telephone & Telegraph Co., 754 P.2d 1172 (Colo. 1988)** (in the absence of a contract, franchise agreement, or statute to the contrary, a utility must pay the cost of relocation of facilities from a public street when required by the municipality under its police power) **U.S. West Communications, Inc. v. City of Longmont, 948 P.2d 509 (Colo. 1997)** (neither a legally binding tariff nor the Public Utility Commission's general jurisdiction preempted a home rule ordinance that prohibited a utility from requiring the municipality to pay for relocation of facilities in the public right-of-way because the ordinance was within the municipality's reasonable exercise of its police powers; home rule analysis is not applicable when comparing a home rule charter or ordinance and a potentially conflicting tariff)
Telecommunications industry	Mixed concern	**City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001)** (ordinance requiring telecommunications providers to obtain a private use permit before occupying or using public rights-of-way conflicted with statute granting telecommunications providers a right to occupy public rights-of-way without additional authorization or a franchise from local municipalities)
MISCELLANEOUS		
Adopting ordinances, procedures	Local concern	**Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. App. 1993)** (procedures by which a home rule municipality chooses to adopt uniform codes for use solely within the city is a matter of purely local concern)
Automobiles, licensing	Statewide concern	**Armstrong v. Johnson Storage & Moving Co., 268 P. 978 (Colo. 1928)** (licensure of vehicles operating on city streets was a matter of state concern, noting absence of local regulation)
Registration of vital statistics	Statewide concern	**People ex rel. Hershey v. McNichols, 13 P.2d 266 (Colo. 1932)** (home rule municipality was required pay the local registrar of vital statistics appointed by state board as required by statute)

Topic	Area of Concern	Citations
Health	Mixed concern	**Spears Free Clinic & Hospital v. State Board of Health, 220 P.2d 872 (Colo. 1950)** (the state has police power to regulate matters affecting general public health concerns, including the right to license and regulate hospitals, but municipalities possess the police power of further regulation of health problems arising in their jurisdiction)
Governmental immunity, tortious acts	Mixed concern	**Lipira v. City of Thornton, 585 P.2d 932 (Colo. App. 1978)** (home rule municipality could not modify the time frame for submitting notice of claims under Colorado Governmental Immunity Act) **Delong v. City and County of Denver, 576 P.2d 537 (Colo. 1978)** (home rule charter extending greater benefits to persons injured by the tortious acts of police officers did not conflict with statutory provisions in the Colorado Governmental Immunity Act establishing compensation limits) **Frick v. Abell, 602 P.2d 852 (Colo. 1979)** (home rule charter providing for greater indemnification of a police officer for exemplary damages awarded against him did not conflict with the Colorado Governmental Immunity Act)
City parks, disposition of property	Local concern	**Save Cheyenne v. City of Colorado Springs, 425 P.3d 1174 (Colo. App. 2018)** (cert. denied (2018)) (home rule municipality's code addressing procedures for disposition of municipal park property superseded statute requiring a public election for disposition of real property held for public purpose)

CHAPTER III
MUNICIPAL HOME RULE ACT OF 1971

INTRODUCTION

Every municipality wishing to adopt, amend, or repeal a home rule charter; adopt a new home rule charter; or adopt a home rule charter at the time of incorporation, must comply with the requirements of the Municipal Home Rule Act of 1971, C. R. S. §§ 31-2-201 et seq.

Prior to the addition of Section 9 to Article XX of the Constitution and prior to the adoption of the act, the procedures for adopting and amending a home rule charter could be found in Sections 4 and 5 of Article XX. However, subsection (3) of Section 9 states that the various provisions in Article XX "as they related to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute." Adoption of the act thus superseded the procedural requirements for adopting and amending home rule charters originally found in Sections 4 and 5 of Article XX.[74]

The question is sometimes asked: Do individual home rule municipalities have any authority to alter or supplement the procedures set forth in the Municipal Home Rule Act, particularly in regard to the procedures for amending home rule charters? Section 9 of Article XX unequivocally assigns solely to the General Assembly the power to provide, by statute, the procedures for adopting and amending home rule charters. Thus, a municipality should be cautious about adopting any requirement or procedure that would directly contradict any provision of the act. However, in an important 2013 court decision, the City of Colorado Springs demonstrated that it is possible for a home rule municipality to adopt requirements that merely "supplement" the procedures in the act, particularly on the front-end of the charter amendment process. Specifically, the city adopted an ordinance requiring proposed charter amendments to address only a single subject, to be subject to a review and comment hearing process, and then to have the ballot question written by a title setting board. The Colorado Court of Appeals upheld all of these requirements as not being in violation of Section 9 of Article XX, or of the act.[75]

The following is a general summary of the basic procedural requirements found in the act. Because this information is only a summary of the language of the act, it should not be used as a substitute for the act itself.

---

[74] Unfortunately, when Section 9 was added to Article XX, this constitutional amendment did not actually delete the superseded language in Sections 4 and 5. The archaic language in those two sections still appears in the constitution to the present day. This has been a source of confusion through the years. For example, if someone reads Section 5 in isolation, they may believe the only way to place a charter amendment on the ballot is via a citizens petition, not realizing that the later adopted Section 9 and the Municipal Home Rule Act now makes it possible for the governing body itself to refer charter amendments to the ballot.

[75] McCarville v. City of Colorado Springs, 338 P.3d 1033 (Colo. App. 2013), cert. denied (2014). Later, the city survived a related legal challenge in the case of Colorado Springs Citizens for Community Rights v. City of Colorado Springs, 360 P.3d 271 (Colo. App. 2015), The plaintiffs in the second case unsuccessfully argued that the additional requirements for initiated amendments should have been adopted itself as an amendment to the Colorado Springs Charter, rather than as a mere ordinance.

GENERAL PROVISIONS

Election Requirements

Procedures. Except as otherwise provided in the act, every election held pursuant to the act must be conducted, as closely as possible, in accordance with the requirements of the Municipal Election Code of 1965, Article 10 of Title 31, C.R.S. (Election Code).[76]

One question raised by this requirement is whether a home rule municipality that has its own election procedures can follow those procedures rather than the Election Code procedures. That question might arise, for instance, in proceedings to amend or repeal an existing charter. Although the act does not answer this question, it would seem that the election procedures of the home rule municipality could be followed since C.R.S. § 31-2-211(1) provides that elections will be conducted in conformity with the provisions of the Election Code. The Election Code provides that home rule municipalities are not required to follow the procedures outlined in the code except those parts of the code adopted by the municipality.[77]

Expenses. The act requires that the municipality pay the expenses of any elections.[78]

Special Elections. Every election required by the act must be held within certain specific time periods. If a regular election is scheduled within the time period required by the act, then the home rule election may be held at the time of the regular election. If no regular election is scheduled within the required time period, a special election on home rule must be called.[79]

Publication. Wherever the term "publication" is used in the act, it means one publication in one newspaper of general circulation in the municipality. If there is no newspaper of general circulation, then publication shall be by posting in at least three public places within the municipality.[80]

Conflicting or Alternative Proposals

Any alternative provision or provisions may be submitted and voted on separately when a charter or charter amendment is submitted to the voters. The alternative provision receiving the highest number of votes, if approved by a majority of the votes of the registered electors voting, shall be deemed approved.[81] If conflicting provisions are adopted that are not submitted as alternatives, the provision that receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.[82]

Change in a Classification of a Municipality

The act establishes a simplified procedure for reclassifying a town with a population greater than 2,000 as a city, or a city with a population of 2,000 or less as a town, by allowing the town or city to simply reclassify itself upon adoption of its home rule charter. If the town or city reclassifies itself by adoption of a charter, it need not comply with the more detailed procedures for reclassification found in Part 2 of Article 1 of Title 31.[83] Many former statutory towns such as Parker, Castle Rock, and Windsor have chosen to retain their classification as a "town" even though their populations far exceed 2,000 today.

Time Limits on Similar Proposals

If voters reject a proposal for a charter commission, charter amendment, or repeal of a charter, no substantially similar proposal may be initiated within 12 months after the rejection.[84]

---

76 C.R.S. § 31-2-211(1).

77 C.R.S. § 31-10-1539(2).

78 C.R.S. § 31-2-211(2).

79 C.R.S. § 31-2-211(3).

80 C.R.S. § 31-2-203(2).

81 C.R.S. § 31-2-215(1).

82 C.R.S. § 31-2-215(2).

83 C.R.S. § 31-2-216.

84 C.R.S. § 31-2-214.

Filing

If voters approve a charter, charter amendment, or charter repeal, a certified copy of the approved measure must be filed with the secretary of state and the municipal clerk within 20 days after voter approval of the measure.[85]

Finality of Elections

No proceeding to contest the adoption of a charter, charter amendment, or charter repeal may be brought unless it is commenced within 45 days after the election adopting the measure.[86]

Initiative, Referendum, and Recall

Every charter must contain procedures for initiative and referendum and for the recall of municipal officers.[87] These requirements raise questions concerning a municipality's ability to deny the exercise of initiative and referendum powers on certain types of municipal ordinances. Article V, Section 1 (9) of the Colorado Constitution states:

> *The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws, except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.*

An emergency ordinance adopted by a municipality is not subject to referendum.[88] And the constitutional reservation of the referendum power applies only to acts that are "legislative" in character, not to acts that are "administrative" in character.[89] A home rule charter may, however, provide that all ordinances are subject to a referendum.[90]

It is not clear whether a home rule charter may prohibit a referendum on any types of ordinances other than emergency or administrative ordinances, although many home rule charters do contain additional prohibitions. It should be noted that Article V, Section 1 specifically grants municipalities the right to establish only the "manner of exercising" initiative and referendum powers as to municipal legislation.

Special requirements exist in Article XX, Section 4 of the Colorado Constitution for the initiative and referendum as applied to franchises in the City and County of Denver. These requirements are made appliable to all home rule municipalities via language in Article XX, Section 6.[91]

Any recall provision in the charter must not be in conflict with Article XXI of the Colorado Constitution. However, home rule municipalities enjoy the authority to adopt recall provisions in their charter or ordinances addressing procedural matters and substantive matters not in conflict with the constitution [92]

---

[85] C.R.S. § 31-2-208.

[86] C.R.S. § 31-2-218.

[87] C.R.S. § 31-2-212; Colo. Const. art. XX, § 5.

[88] Shields v. City of Loveland, 218 P. 913 (Colo. 1923).

[89] Vagneur v. City of Aspen, 295 P.3d 222, 505 (Colo. 2013) (discussing Witcher v. City of Canon City, 716 P.2d 445 (Colo. 1986)); *see also* City of Aurora v. Zwerdlinger, 571 P.2d 1074 (Colo. 1977).

[90] Burks v. City of Lafayette, 349 P.2d 692 (Colo. 1960).

[91] Prior to a 1986 constitutional amendment, Section 4 automatically required voter approval for granting any and all franchises. This requirement dated from 1902 and an era when the granting of valuable franchises for street car systems and utilities was often highly controversial and subject to corrupt practices. *See* People ex rel Attorney General v. News-Times Pub. Co., 84 P. 912 (Colo. 1906). Then in the early 1980s during the burgeoning era of cable TV expansion, cable companies chafed under the voter-approval requirement, and attempted to circumvent it by concocting the theory that cable systems merely required a permit, not a franchise, to operate in city rights-of-way. The Colorado Supreme Court decisively rejected this theory in the case of Community Telecommunications Inc. v. Heather Corp., 677 P.2d 330 (Colo. 1984). Thus, shortly thereafter, the cable industry successfully lobbied the Colorado General Assembly to refer a constitutional amendment that would delete from Article XX the automatic voter-approval requirement for all franchises, and substitute instead a requirement that all franchises must be subject to a referendum if local citizens choose to petition for a vote on the franchise. Despite this change, some home rule municipalities still have a provision in their local charter requiring all franchises to be put to a vote.

[92] Bernzen v. City of Boulder, 525 P.2d 416 (Colo. 1974). *See also* C.R.S. §§ 31-4-501 to 507 which codifies comprehensive procedures for the recall of municipal elected officials, but includes this exception, "The provisions of this part 5 apply to all municipalities except to the extent that a municipality has adopted provisions pursuant to article XX or XXI of the state constitution inconsistent with this part 5."

The charter commission should obtain legal advice particularly when drafting the initiative, referendum, and recall sections of the charter.

Vested Rights

No charter, charter amendment, or charter repeal measure approved by a municipality may destroy or affect rights vested in or against the municipality prior to the adoption of the particular measure.[93]

PROCEDURES FOR ADOPTING A HOME RULE CHARTER

Initiation

Home rule may be initiated by submission to the governing body of a petition signed by not less than 5 percent of the registered electors of the municipality, or by ordinance of the governing body.[94]

Election on Forming the Charter Commission and on Commission Members

Call. Within 30 days after initiation, the governing body must call an election on the question of whether a charter commission shall be formed, and for the purpose of electing members to the charter commission.[95]

Time of Election. The commission election must be held within 120 days after the call of the election.[96]

District or At-Large Representation. The petition or ordinance initiating home rule may specify that commission members are to be elected from districts or from a combination of districts and at-large. If the petition or ordinance requires some type of district election, the governing body must divide the municipality into compact districts of approximately equal population before publishing the first notice of the commission election.[97] Any determination of population for the purpose of establishing districts must be made on the best readily available information.[98] Acceptable sources of population information would probably include the latest United States Census Reports and Colorado Department of Local Affairs.

First Notice. Notice of the election must be published by the governing body at least 60 days prior to the election.[99]

Candidates for the Commission. Candidates for the charter commission must be nominated by petition (on forms supplied by the municipal clerk) signed by at least 25 registered electors of the municipality. The nomination must be filed with the municipal clerk within 30 days after publication of the first election notice and must be accompanied by a statement from the nominated candidate of his or her consent to serve if elected.[100] Although this scenario is not directly addressed in the act, if fewer candidates emerge than the total number of seats to be filled on the proposed charter commission, the election may nevertheless proceed, and afterwards the governing body may fill the vacant seats by appointment.[101]

If the petition or ordinance initiating home rule provides for the election of some charter commission members by districts, the question may arise whether the petition nominating a commission member to represent a district must be signed only by electors residing in that district. This question is not directly answered in the act. However, C.R.S. § 31-2-211(1) requires that, except as otherwise provided, every election held pursuant to the act should be conducted, as closely as possible, in accordance with the requirements of the Election Code. The Election Code provides, in C.R.S. § 31-10-302, that where a candidate for the municipal governing body is to be elected from a ward, electors residing in the candidate's ward shall sign the nomination petition. While this requirement might not be specifically applicable to the nomination of commission members, the better view might be to require petitions for commission candidates to be signed by the required number of electors residing within the candidate's district.

---

93 C.R.S. § 31-2-217.

94 C.R.S. § 31-2-204(1).

95 C.R.S. § 31-2-204(2).

96 C.R.S. § 31-2-204(2).

97 C.R.S. § 31-2-206(2).

98 C.R.S. § 31-2-213.

99 C.R.S. § 31-2-204(2).

100 C.R.S. § 31-2-204(3).

101 C.R.S. § 31-2-206(3).

Second Notice. As soon as possible after the filing of the nomination petitions and the consent to serve statements, the governing body must publish a second notice of the election including the names of the candidates for the charter commission.[102]

Election Results. At the election, voters cast ballots for or against forming the charter commission and to elect the commission members. A majority of the registered electors voting is required to approve the formation of a charter commission.[103]

If voters approve the formation of the commission, those candidates receiving the highest number of votes are elected as members of the commission. If there are tie votes for the last available vacancy on the commission, the municipal clerk decides, by lot, who shall be elected.[104]

Charter Commission

Duties of the Commission. The commission must hold at least one public hearing while preparing the charter, submit a proposed charter to the governing body within 180 days after the commission election, and prepare and submit a revised proposed charter if the proposed charter is rejected by the voters.[105]

Organization of the Commission. The governing body calls the first meeting of the commission within 20 days after the election of the commission.[106] Because the commission has a limited time in which to work (180 days), and because that time begins running from the date of the commission election, the governing body should call the first meeting of the commission as soon as possible after the election.

Further meetings of the commission are called either by the chairperson of the commission or by a majority of the members of the commission. All meetings of the commission must be open to the public.[107]

At the first meeting, the commission is required to elect a chairperson and a secretary from among its members and may elect any other officers as it feels necessary from among its members. In addition, the commission may adopt its own rules of procedure. A quorum of the commission consists of a majority of the commission members.[108]

Number of Members. The number of commission members is determined by the population of the municipality as follows: population of less than 2,000, nine members; population of at least 2,000, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed 21 members.[109]

Powers of the Commission. The commission has the power to employ a staff; consult and retain experts; purchase, lease, or otherwise obtain necessary supplies, materials, and equipment; accept funds, grants, gifts, and services from any public or private source; conduct interviews; and make investigations. After completion of the commission's work and dissolution of the commission, the commission's property becomes the property of the municipality.[110]

District or At-Large Representation. The petition or ordinance initiating home rule may require district representation or a combination of district and at-large representation.[111] If the petition or ordinance initiating home rule is silent on how commission members shall be elected, all members will be elected at-large.

Qualifications of Commission Members. Any registered elector of the municipality is eligible to serve on the commission.[112]

Compensation of Commission Members. Commission members receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.[113]

---

102 C.R.S. § 31-2-204(3).

103 C.R.S. § 31-2-205(1).

104 C.R.S. § 31-2-205(2).

105 C.R.S. §§ 31-2-206(9), (10); C.R.S. § 31-2-207(3).

106 C.R.S. § 31-2-206(4).

107 C.R.S. § 31-2-206(4).

108 C.R.S. § 31-2-206(4).

109 C.R.S. §§ 31-2-206(1)(a), (1)(b).

110 C.R.S. § 31-2-206(5).

111 C.R.S. § 31-2-206(2).

112 C.R.S. § 31-2-206(3).

113 C.R.S. § 31-2-206(7).

Vacancies on the Commission. The governing body of the municipality fills, by appointment, any vacancy on the commission.[114]

Expenses of the Commission. The municipality pays the reasonable expenses of the commission, upon written verification of the expenses by the chairperson and secretary of the commission. The governing body of the municipality must enact any supplemental appropriation ordinances as necessary to cover the commission's expenses.[115]

Election on the Charter

Call and Publication. Within 30 days after the date on which the commission submits the proposed charter to the governing body, the governing body must publish notice of and call an election on the proposed charter. The notice must contain the full text of the proposed charter.[116]

Time of Election. The election on the proposed charter must be held not less than 60 days nor more than 185 days after publication of the notice of the election.[117]

Ballot Requirements. Ballot requirements are discussed on page 41 under "Ballot Requirements."

Election Results. A charter is adopted if a majority of the registered electors voting approve the charter, and the approved charter takes effect at the time established in the charter.[118]

Filing With the Secretary of State and Clerk. Within 20 days after its approval, any new charter must be filed with the Colorado secretary of state and municipal clerk. Upon such filing, the Colorado courts are allowed to take judicial notice of the charter.[119]

If electors reject the proposed charter, the charter commission must prepare a revised proposed charter in the same general manner as it prepared the proposed charter, and the governing body must submit the revised proposed charter to an election in the same manner as the original proposed charter.[120] If voters reject the revised proposed charter, then the charter commission is dissolved.[121]

PROCEDURES FOR AMENDING A HOME RULE CHARTER

Initiation

Amendments to existing home rule charters may be initiated by a petition signed by a minimum number of registered municipal electors or by ordinance adopted by the governing body.[122]

Petition Requests

The following requirements pertain to a charter amendment initiated by petition.

Commencement. The petition process is commenced by filing with the municipal clerk a statement of intent to circulate a petition. The statement must be signed by at least five registered electors of the municipality.[123]

Circulation and Filing. The petition is circulated for a period not to exceed 90 days from the date of the filing of the statement of intent. The petition must be filed with the municipal clerk before the close of business on the 90th day, or on the next business day if the 90th day falls on a Saturday, Sunday, or legal holiday.[124]

---

114 C.R.S. § 31-2-206(3).

115 C.R.S. § 31-2-206(7).

116 C.R.S. § 31-2-207(1).

117 C.R.S. § 31-2-207(1).

118 C.R.S. § 31-2-207(2).

119 C.R.S. § 31-2-208.

120 C.R.S. § 31-2-207(3).

121 C.R.S. § 31-2-207(3).

122 C.R.S. § 31-2-210(1).

123 C.R.S. § 31-2-210(1)(a)(I).

124 C.R.S. § 31-2-210(1)(a)(I).

Form and Contents. The petition must contain the text of the proposed amendment and must state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the petition seeks to submit the proposed amendment at a special election, the petition must state an approximate date for the election.[125] The petition also must meet the additional requirements set forth in C.R.S. § 31-2-220 through 225; those additional requirements are summarized on page 39 under "Additional Petition Requirements."

Single Subject Considerations. Neither Article XX nor the Municipal Home Rule Act imposes a single subject rule on initiated or referred charter amendments. Furthermore, when the Colorado Constitution was amended in 1994 to adopt a single subject rule, the amendment applied only to state initiatives and state constitutional amendments, not to local measures.[126] In the absence of any definitive state law on the subject, some home rule municipalities have adopted their own single subject rule for charter amendments.[127] The Colorado Supreme Court has been inconsistent through the years on the question of whether or not there is a common law single subject rule governing charter amendments. For example, in 1926, the C ourt struck down an attempt to amend the Denver charter to switch from a strong mayor to a council-manager form of government, based upon a finding that the petition "combined" several amendments that were not "germane" to one another.[128] However, in later years, the court seemed to take a more sanguine view of multi-faceted amendments that may touch upon "diverse subjects" in a charter, as long as the ballot title gives adequate notice to the voters of the changes being proposed.[129] In these later cases, the court seemed particularly interested in blessing omnibus charter amendments designed to clean-up and "modernize" old charter language.

Number of Signatures. If the petition seeks to submit an amendment at the next regular election, at least 5 percent of the electors of the municipality who are registered on the date of filing of the statement of intent must sign the petition. If the petition seeks to submit an amendment at a special election, at least 10 percent of the electors of the municipality registered on the date of filing the statement of intent must sign the petition.[130]

Date of Filing. If the petition seeks to submit an amendment at the next regular election, it must be filed with the municipal clerk at least 90 days prior to the date of the regular election. If the petition seeks to submit an amendment at a special election, it must be filed with the municipal clerk at least 90 days prior to the approximate special election date stated in the petition.[131]

Certification by Municipal Clerk. Within 15 working days after the filing of the petition, the municipal clerk must provide certification to the governing body as to the validity and sufficiency of the petition.[132]

Election on the Proposed Amendment

Notice and Call. Within 30 days after the adoption of the ordinance or the date of filing of the petition (assuming the clerk certifies the petition to be valid and sufficient), the governing body must call and publish notice of an election on the proposed amendment. The notice must contain the full text of the proposed amendment or statement of the proposal as contained in the ordinance or petition.[133]

Ballot requirements. Ballot requirements are discussed on page 41 under "Ballot Requirements."

Time of Election. The election on the amendment must be held not less than 60 days nor more than 120 days after publication of the notice of election. If the amendment was initiated by petition and is sought to be submitted at a special election, the election must be held as near as possible to the approximate date stated in the petition, subject to the foregoing time requirements.[134]

---

125 C.R.S. § 31-2-210(1)(a)(II).

126 COLO. CONST. Art. V, § 1(5.5); Art. XIX, § 2(3)

127 *See, e.g.*, Colorado Springs Citizens for Community Rights v. City of Colorado Springs, 360 P.3d 271 (Colo. App. 2015); McCarville v. City of Colorado Springs, 338 P.3d 1033 (Colo. App. 2013), cert. denied (2014).

128 People ex rel Walker v. Stapleton, 247 P. 1062 (Colo. 1926).

129 City and Cnty. of Denver v. Mewborn, 354 P.2d 155 (Colo. 1960); Coopersmith v. City and Cnty. *of Denver*, 399 P.2d 943 (Colo. 1965).

130 C.R.S. §§ 31-2-210(1)(a)(III), (IV).

131 C.R.S. §§ 31-2-201(1)(a)(III), (IV).

132 C.R.S. § 31-2-210(3).

133 C.R.S. § 31-2-210(4).

134 C.R.S. § 31-2-210(4).

Election Results. An amendment is deemed approved if a majority of the registered electors voting approve the proposed amendment.[135]

Filing With the secretary of state and clerk. Within 20 days after its approval, any charter amendment must be filed with the Colorado secretary of state and municipal clerk. Upon such filing, the Colorado courts are allowed to take judicial notice of the charter amendment.[136]

PROCEDURES FOR REPEALING A HOME RULE CHARTER

To date, there has never been an example of a vote anywhere in Colorado to entirely repeal an existing home rule charter and return the municipality to the status of a statutory city or town. But the Colorado Constitution and the Home Rule Act contemplate that local citizens always retain the power to make this choice.

Initiation

Action to repeal a charter may be initiated by petition, or by a two-thirds vote of the governing body adopting an ordinance to submit the proposed repeal to a vote of the registered electors of the municipality.[137]

Petition Requirements

The requirements for commencement, circulation, filing, and contents of the petition are similar to those applicable to a petition to amend a charter, except that the petition:

- must state the proposal to repeal the charter; and
- must be signed by at least 15 percent of the registered municipal electors, whether the petition seeks submission of the proposal at a regular election or at a special election.[138]

Election on the Proposed Repeal

Notice and Call. Within 30 days after initiation, the governing body must call and publish notice of an election on the proposed repeal. The notice must contain a statement of the proposal as contained in the ordinance or the petition.[139]

Ballot Requirements. Ballot requirements are discussed on page 41 under “Ballot Requirements.”

Time of Election. The election must be held not less than 60 nor more than 120 days after publication of the notice of election. If the proposed repeal was initiated by petition and is sought to be submitted at a special election, the election must be held as near as possible to the approximate date stated in the petition, subject to the foregoing time requirements.[140]

Election Results. A charter is repealed when a majority of the registered electors voting approve the repeal. If the charter is repealed, the municipality must then begin to organize and operate in accordance with the statutes applicable to a municipality of its size.[141]

PROCEDURES FOR HOME RULE MUNICIPALITIES TO ADOPT A NEW CHARTER

When extensive revision of a charter is desired, or when an entire change in the form of government is proposed (such as from mayor-council to council-manager), a new charter commission might be preferable to a charter amendment.[142] Attempts to convene

---

135 C.R.S. § 31-2-210(6).

136 C.R.S. §31-2-208.

137 C.R.S. § 31-2-210(2).

138 C.R.S. § 31-2-210(2).

139 C.R.S. § 31-2-210(4).

140 C.R.S. § 31-2-210(4).

141 C.R.S. § 31-2-210(6).

142 *See* People ex rel Walker v. Stapleton, 247 P. 1062 (Colo. 1926).

a new charter commission and propose to the voters an entirely new home rule charter have been quite rare in Colorado. Shortly after World War II, a charter convention was convened in Denver to draft a "reform charter" that would transport the city into the future while applying modern organizational and management principles, but the voters rejected the new charter at the polls in 1948.[143] Even when a charter amendment proposes to change entirely the form of government, the tradition in Colorado has been to propose the change through an extensive charter amendment rather than writing an entirely new charter. For example, when Denver briefly switched from a mayor-council form of government to a commission form of government in 1912, the change was accomplished via a charter amendment, not a new charter.[144] Four years later when Denver decided to switch to its current strong mayor form of government, again the charter changes were effected with one lengthy amendment. In more recent times, both Colorado Springs (2011) and Pueblo (2017) made the switch from council-manager to strong mayor form of government through the charter amendment process. Nevertheless, governing bodies and the people themselves always have the option to start from scratch and write an entirely new charter under the following procedures.

Initiation

Action to form a new charter commission may be initiated by petition or by the governing body adopting by a 2/3 vote of its members an ordinance submitting the proposed formation of a new charter commission to a vote of the registered electors of the municipality.[145]

Petition Requirements

The requirements for commencement, circulation, filing, and contents of the petition are similar to those applicable to a petition to amend a charter, except that the petition:

- must state the proposal to form a new charter commission;
- must be signed by at least 15 percent of the registered municipal electors, whether the petition seeks submission of the proposal at a regular election or at a special election; and
- must be filed with the municipal clerk at least 90 days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.[146]

Election on the Proposed Formation of a New Charter Commission

Notice and Call. Within 30 days after initiation, the governing body must call and publish notice of an election on the proposal. The notice must contain a statement of the proposal as contained in the ordinance or the petition.[147]

Ballot Requirements. Ballot requirements are discussed on page 41 under "Ballot Requirements."

Time of Election. The election must be held not less than 60 days after publication of the notice of election. If the proposal was initiated by petition and is sought to be submitted at a special election, the election must be held as near as possible to the approximate date stated in the petition, subject to the foregoing time requirements.[148]

Procedures. The procedures for the forming and functioning of a new charter commission must comply as nearly as possible with the procedures for the forming and functioning of an initial charter commission.[149] This means that the time and method requirements for nominating candidates to the initial charter commission should be followed, as should other procedures contained within Colorado Revised Statutes § 31-2-204 through § 31-2-207.

Additional Petition Requirements

The following petition requirements, in addition to other applicable requirements, apply to any petition to initiate the adoption, amendment, or repeal of a charter, including the formation of a new charter commission. Any petition that fails to meet the applica-

---

143 *See* Mahood v. City and Cnty. of Denver, 195 P.2d 379 (Colo. 1948).

144 People ex rel Moore v. Perkins, 137 P. 55 (Colo. 1913).

145 C.R.S. § 31-2-210(2).

146 C.R.S. § 31-2-210(2).

147 C.R.S. § 31-2-210(4).

148 C.R.S. § 31-2-210(4).

149 C.R.S. § 31-2-210(5).

ble requirements or that is circulated in a manner other than that permitted by the applicable requirements is invalid.[150]

Warning on Petition. At the top of each page of the petition, the following must be printed in plain red letters no smaller than 10-point, boldface type:[151]

> WARNING: IT IS AGAINST THE LAW:
>
> For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.
>
> DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR
>
> Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.

Signatures. The petition must be signed only by registered electors by their own signatures; next to each signature, the signer's residence address, including street and number (if any) and the municipality, and the date of signing, must be included.[152]

Affidavit. Each petition must have attached an affidavit of some registered elector stating the elector's address; that the affiant is a registered elector of the municipality or of the territory proposed to be incorporated; that the affiant circulated the said petition; that each signature thereon was affixed in his or her presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector; and that the affiant has not paid or will not in the future pay, and that the affiant believes that no other person has so paid or will pay, directly or in-directly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to such petition. No petition may be accepted for filing if it does not have the affidavit attached.[153]

Form of Petition. The petition must be printed on pages 8.5-inches wide by 11-inches long, with a margin of two inches at the top for binding; the sheets for signature must have their ruled lines numbered consecutively and must be attached to a complete copy of what is proposed, printed in plain block letters no smaller than eight-point type. Petitions may consist of any number of sections composed of sheets arranged as required.[154]

Representatives of Signers. Each petition must designate by name and address not less than three nor more than five registered electors to represent the signers thereof in all matters affecting the petition.[155]

Approval of Form. No petition may be printed, published, or otherwise circulated until the municipal clerk approves it as to form only. The clerk must ensure that the petition contains only the matters required by the statute and contains no extraneous material. The clerk must approve or disapprove the form of the petition within five working days of submission. The petitions must be prenumbered serially.[156]

Disassembly. Any disassembly of the petition that has the effect of separating the affidavits from the signatures will render the petition invalid. Prior to the time of filing, the persons designated in the petition to represent the signers must attach the sheets containing the signatures and affidavits together; the sheets must be bound in convenient volumes together with the sheets containing the signatures accompanying the same.[157]

Protest. A petition that has attached an affidavit by a registered elector that each signature thereon is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing such petition was at the time of signing a registered elector is *prima facie* evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors, unless a protest in writing, under oath, is filed in the clerk's office by some registered elector of the municipality (or territory proposed to be incorporated, if the petition is for

---

150 C.R.S. § 31-2-219.

151 C.R.S. § 31-2-220(1).

152 C.R.S. § 31-2-220(2).

153 C.R.S. § 31-2-220(2).

154 C.R.S. § 31-2-221(1).

155 C.R.S. § 31-2-221(1).

156 C.R.S. § 31-2-221(1).

157 C.R.S. § 31-2-221(2).

the adoption of a home rule charter in connection with incorporation of a municipality) within 30 days after such petition is filed, setting forth with particularity the grounds of the protest and the names protested.[158]

Notice of Hearing. If a protest is filed, the clerk must mail a copy of the protest to the persons named in the petition as representing the signers at the addresses given in the petition, together with a notice fixing a time for a hearing on the protest. The hearing must be not less than five nor more than 20 days after the notice is mailed. If, at the hearing, the protest is denied in whole or in part, the person filing the protest may file, within 10 days after the denial, an amended protest. A copy of the amended protest must be mailed to the persons named in the petition. A hearing must be held on the amended protest as in the case of the original protest. No amendment to an amended protest is permitted.[159]

Hearing. All records and hearings must be public, and all testimony at the hearing must be under oath. The clerk has the power to issue subpoenas to compel the attendance of witnesses and the production of documents at the hearing. If any witness fails to obey the subpoena, the clerk may petition the district court for an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court is punishable as a contempt of court.[160] Hearings must be held as soon as is conveniently possible and must be concluded within 30 days after the commencement thereof. The result of the hearing must be certified to the persons representing the signers of the petition.[161]

Insufficiency of Petition. If the petition is declared insufficient in form or number of signatures of registered electors, a majority of the persons representing the signers of the petition may withdraw it. Within 15 days after the insufficiency is declared, the petition may be amended or additional names signed, and the petition may then be refiled as an original petition.[162]

Review of Determination. The finding as to the sufficiency of a petition may be reviewed by the district court of the county in which the petition is filed; the district court's decision is subject to review by the Supreme Court.[163]

Ballot Requirements

The following requirements apply to the official ballot for a proposal to adopt, amend, or repeal a home rule charter, including the formation of a new charter commission.

Ballot. The proposal must appear upon the official ballot by ballot title only and, if there is more than one proposal, they must be numbered consecutively in the order determined by the governing body and must be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title must appear once on the official ballot, must be separated from the other ballot titles next to it by heavy black lines, and must be followed by the words "yes" and "no" as follows:[164]

(HERE SHALL APPEAR THE BALLOT TITLE IN FULL)

Yes

No

---

158 C.R.S. § 31-2-223(1).

159 C.R.S. § 31-2-223(1).

160 C.R.S. § 31-2-223(2); C.R.S. § 13-10-112(2) (allowing municipal courts to enforce subpoenas issued by the clerk).

161 C.R.S. § 31-2-223(2).

162 C.R.S. § 31-2-223(2).

163 C.R.S. § 31-2-223(2).

164 C.R.S. § 31-2-222.

Unlawful Acts Concerning Petitions

The following acts are unlawful with respect to any petition to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission:

- for any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of such person, organization, association, league, or political party;
- for any person to sign any name other than theirs own to any such petition or knowingly to sign their name more than once for the same measure at one election;
- for any person who is not a registered elector of the municipality or of the territory proposed to be incorporated at the time of signing the same to sign any such petition;
- for any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in such affidavit to be true;
- for any person to certify that an affidavit attached to such petition was subscribed or sworn to before them unless it was so subscribed and sworn to before them and unless such person so certifying is duly qualified under the laws of this state to administer an oath;
- for any person willfully to do any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election or to refuse to submit any such petition in the form presented for submission at any election.

Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in C.R.S. § 18-1.3-501.[165]

PROCEDURES FOR ADOPTING A CHARTER UPON INCORPORATION

The last Colorado municipality to adopt a home rule charter immediately upon incorporation was the Town of Mountain Village in 1995.[166] More commonly, a newly incorporated municipality will begin as a statutory city or town and get settled in for a few years before taking the next step of reorganizing under a home rule charter. For example, Lone Tree incorporated in 1995 and then adopted a home rule charter in 1998; Centennial incorporated in 2001 and adopted a home rule charter in 2008; Castle Pines incorporated in 2007 and adopted a home rule charter in 2019. The following is a brief summary of how a newly formed municipality can go the short route as Mountain Village did. Incorporation procedures found in C.R.S. §31-2-101 et seq., as amended, should be referred to while reading this summary.

Initiation. The petition for incorporation (C.R.S. § 31-2-101) must also petition for initiation of home rule and must be signed by at least 5 percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality.[167]

Procedures. The court-appointed election commission will exercise the powers, functions, and responsibilities assigned in the Act to the governing body or municipal clerk.[168]

The procedures required for incorporation and for adoption of a home rule charter are to be modified as necessary to allow simultaneous consideration of incorporation and home rule.[169]

Election on Incorporation and Home Rule. At the incorporation election, the electors also vote on whether a charter commission should be formed and on the candidates for the charter commission.[170]

---

165 C.R.S. § 31-2-225.

166 *See* May v. Town of Mountain Village, 132 F.3d 576 (10th Cir. 1997).

167 C.R.S. § 31-2-209(2).

168 C.R.S. § 31-2-209(3).

169 C.R.S. § 31-2-209(3).

170 C.R.S. § 31-2-209(4).

Election Results. If a majority of the registered electors voting approve incorporation and forming a charter commission, the first election of officers of the municipality must be stayed pending drafting and approval of the home rule charter pursuant to the requirements of §§ 31-2-206, 207.[171]

When the charter or revised charter is finally approved, or when the revised charter is rejected, the election commission then proceeds with the first election of municipal officers and the completion of incorporation as required in Part 1 of Article 2 of Title 31, C.R.S

[171] C.R.S. § 31-2-209(5).

CHAPTER IV
PREPARING THE CHARTER

INTRODUCTION

The opportunity to draft a charter may arise only once in the lifetime of a community. When it does, those responsible for drafting the charter, the charter commission members, usually face two major problems: a limited amount of time in which to write the charter and a lack of experience in writing charters. This chapter offers some assistance with both problems.

PRE-COMMISSION PREPARATION

Partly because of the time limitations placed on the charter commission's work, several municipalities have, prior to the initiation of home rule, established study groups composed of both citizens and councilmembers. These groups usually provide background work by studying whether the municipality will in fact profit by the adoption of a home rule charter and the advantages and disadvantages of home rule in relation to the needs of their own municipality; they also review various charters to determine what might be contained in their own charter; and they possibly may even draft a charter that would reflect the individuality of the municipality's needs. A study group then reports its results to the municipal governing body.

Study group work may assist in the adoption of a home rule charter. A study group will bring the idea of home rule to the attention of the municipality's citizens and, by so doing, begin the process of educating citizens on home rule and creating citizen interest in home rule. The study group also may provide invaluable background work that can be used later by the charter commission, which, because of time limitations placed on the charter commission, might be impossible to obtain otherwise.

Whether the study group should prepare a charter may be open to question. It might be useful to the charter commission as a starting point for deliberations; however, it also might cause the commission to limit the scope of its work unduly if the commission assumes that its only duty is to modify and adopt the study group's charter. Because commission members are elected by the citizens to write the charter and because there is a variety of possible charter provisions available, such a limitation on the commission's work might not be in the best interests of the community. Regardless of whether the study group writes a charter, its other services may be of invaluable assistance to the commission.

There may, in fact, be several study groups organized within a community prior to the initiation of home rule. Organizations such as the local League of Women Voters might form their own groups and offer their results to a citizen-council group or to the charter commission.

The council of one municipality considering the adoption of home rule asked the city attorney to compile samples of various possible charter provisions. Prior to the first meeting of the charter commission, the attorney compiled a volume of material containing three or four samples of possible charter provisions and an outline analysis of the differences among the samples. The material was presented to the commission at one of its early meetings and apparently expedited debate and work of the commission.

The Colorado Municipal League has prepared a matrix of charter provisions of all the home rule municipalities in Colorado. The matrix allows for comparison of how home rule municipalities have addressed issues in their respective charters. This matrix and copies of charters that have been adopted are available from the League.

Sample procedural and organizational rules used by charter commissions are located in Appendix H.

Finally, the charter commission itself should be representative of the whole community and should not be dominated by

municipal officials or by one or a few interest groups. Those interested in initiating home rule might encourage people who represent various community interests to run for membership on the charter commission.

CHARTER COMMISSION ORGANIZATION

To create a charter of high quality within the statutory time limits, the charter commission itself must be well organized. The Municipal Home Rule Act of 1971 provides that the first meeting of the charter commission must be called by the governing body within 20 days after the election of the commission members.[172] The first meeting should be called as soon as possible, and the governing body should select a public place for the meeting and set a time and day that is convenient for the commission members.

At the first meeting, the commission might organize its work, establish its operating procedures, and, if necessary, acquaint the members of the commission with each other. The following are suggestions for action at the first meeting:

- If the members of the commission are not well acquainted, it might be best to elect only temporary officers as chairperson pro tem and secretary pro tem. (If the members are well acquainted, the commission may wish to select permanent officers and a permanent steering committee to expedite the work of the commission.)
- Select a small temporary steering committee that would be responsible for reporting at the second meeting its suggestions on the following:
    - A. A simple plan of organization and set of procedural rules to be followed in commission meetings
    - B. Nominations for any offices required by the organization plan
    - C. A tentative schedule of general commission meetings and a tentative date for the public hearing or hearings on the charter
    - D. A tentative estimate of the financial needs of the commission
    - E. Suggestions for the employment of any needed consultants
    - F. A program for meetings which might include speakers on municipal home rule law and on the powers and duties of the charter commission.
- Make a list of commission members with their addresses and phone numbers. (This list might be copied and distributed to all commission members.)
- Obtain suggestions from the members concerning the most convenient times and places for future meetings. Set the time and place for the second meeting.
- Discuss the preliminary needs of the commission.
- Schedule a short time during the meeting to receive any citizen petitions, suggestions, or study group results.
- If possible, provide loose-leaf binders to commission members for keeping material pertaining to the work of the commission.

At the second meeting, the commission might complete the organizational work of the commission and inform members of their legal powers, duties, and responsibilities. The second meeting might include:

- Hearing and discussing the report of the temporary steering committee
- Adopting a plan of organization
- Receiving nominations for officers, as well as electing and installing officers
- Discussing and adopting rules of procedure including such matters as scheduling meetings, the duties of the elected officers, and the adoption of a standard book on parliamentary rules
- Discussing and possibly establishing time limits for various phases of the commission work in order to avoid a rush to meet last-minute deadlines
- Hearing any speakers on the commission's legal powers, duties, and responsibilities
- Considering whether consultants should be utilized to advise the commission.

---

[172] C.R.S. § 31-2-206(4).

It is vital that the content of each meeting be planned in advance to ensure the completion of the commission's work within necessary time limits. The commission might consider establishing a permanent steering committee to plan and give direction to the meetings. This committee might be composed of the elected officers plus a few other members, remembering to keep the size of the committee workable.

Minutes of each committee and commission meeting should be kept and made available to the members of the commission to keep each member up to date on the commission's work.

The commission might prepare a proposed budget and present it to the municipality's governing body. Because the municipality is required to pay the expenses of the commission, it should, if possible, receive estimated budgets from the commission to plan for the payment of commission expenses.

Perhaps the greatest need, in addition to well-planned meetings, is well-conducted meetings. Rules of procedure should be followed to provide a sound structure for commission discussions and decisions, and the presiding officer must keep the commission focused on the business at hand. Again, because of statutory time limitations, wasted time in commission work can only reduce the quality of the final charter.

To save hours of work for the commission as a whole, one home rule charter commission appointed a five-member drafting committee at its first organizational meeting. This committee met independently of the total charter commission and drafted proposed sections of the charter. Prior to each meeting of the entire commission, drafted sections were given to the members of the commission to review. The commission then discussed and offered amendments and corrections to the sections drafted by the committee.

Another charter commission selected a different procedure. The first two meetings of the commission were concerned almost wholly with establishing the organization and procedural rules of the commission. At the first meeting a president, vice president, and secretary were elected, and two committees were established. The Rules and Organization Committee drafted the rules of organization and procedure for the commission and answered questions regarding interpretation of the rules during the term of the commission. The second committee, the Publicity and Steering Committee, was responsible for all publicity related to the work of the charter commission, and for formulating plans to promote and explain the charter to the people after the commission completed its work. At the commission's second meeting, the organizational structure and procedural rules recommended by the Rules and Organization Committee were adopted, and three additional standing committees were named. The Drafting Committee was responsible to draft various charter provisions. The Calendar Committee established programs and a schedule for the commission's work. This committee decided what topics would be discussed at each meeting and provided commission members with all necessary information relating to the particular topic under discussion. The Finance and Personnel Committee cleared budget expenditures with the municipality's administrator and arranged for necessary consultant, clerical, or stenographic help.

Finally, it should be remembered that the act contains several requirements pertaining to the work of the charter commission. These requirements are summarized on page 35 of this handbook. One particular provision to keep in mind is § 31-2-206(9), which requires the charter commission to hold at least one public hearing while preparing the proposed charter.

SPECIAL CONSULTANTS

The charter commission can minimize its understandable lack of experience in charter writing by obtaining the services of an attorney or other special consultant experienced in the areas of charter drafting, home rule, public finance, and municipal law generally. If the commission does not have sufficient funds to hire a special consultant it might consider, at a minimum, requesting the assistance of persons in other home rule communities who are experienced in the problems and procedures of drafting charters.

If used properly, a special consultant with practical experience or technical knowledge can be of invaluable assistance to the commission.

DRAFTING THE CHARTER

Because the charter likely will not be amended frequently, special care should be taken in drafting charter provisions. Provisions should be written in clear, simple, and concise language. The charter is a legal document; thus, words used in the charter must be chosen with care to ensure that those words clearly state the intended meaning. If they do not, litigation may result, and numerous amendments to the charter may be required.

The charter should be viewed as a single, unified instrument, consistent in language and content. Inconsistent charter provisions also can lead to unnecessary litigation regarding the real meaning or intent of the charter.

The charter should be viewed as a lasting document. As noted previously in this handbook, the charter is to the municipality what a constitution is to the federal or state government; the United States Constitution has lasted for centuries, and the Colorado Constitution has lasted for decades. Opportunities to amend the charter may be infrequent, and such amendments may be difficult to accomplish. Thus, when evaluating the need for or desirability of a particular charter provision, the commission may wish to take a long-range view of the charter. It may be helpful, for instance, to evaluate whether the provision addresses a long-range issue appropriate for inclusion in the charter or addresses an immediate or ephemeral issue that may change with time and may thus be better addressed by ordinance.

As noted previously, the charter is also a document of limitation; a home rule municipality has the power to act unless the charter limits such action. Therefore, the most flexible charter is a document that contains the minimum requirements stated in general and broad terms.

Finally, a simple, flexible numbering system for charter provisions should be used so that future amendments to the charter can be easily inserted in their proper place.

CONTENTS OF THE CHARTER

Philosophy of the Commission

A charter is the central document governing a home rule municipality. It is to the municipality what the constitution is to the state. It outlines the organizational structure of the municipality, establishes the basic procedures to be followed when the governing body acts, and imposes restrictions on the powers of the municipality.

Because charter provisions are legally viewed as limitations on the powers of the municipality, the charter commission must first determine whether the proposed charter should be of a broad and general nature, or of a detailed and restrictive nature. The commission should answer this question before it begins drafting specific charter sections since the decision will affect not only the contents of the charter but also the wording of the charter provisions.

The experiences of several Colorado municipalities suggest that the best charters are broad and general in nature, since broadly worded charters generally create more flexible and responsive governments.

One of the major advantages of home rule is that it frees the municipality from the often excessive or outdated restrictions found in state statutes. If the home rule charter is itself extremely detailed or restrictive, the municipality and its citizens may not obtain the benefits offered by home rule. In contrast to the charter, ordinances are more easily adopted, amended, and repealed, thus allowing the municipality to seek new methods to solve local problems, to respond more quickly and effectively to local problems, to create an effective administrative system based on continuing experience, and to correct or change previous judgments as needed.

Some people argue that a charter with few restrictions on the local government is a dangerous document; however, this should not be so. The charter should contain the basic structure of the government and will, to some degree, limit the authority of municipal officials. Moreover, there are limits set by the state and federal constitutions, by the state legislature in matters that are not purely local and municipal, and by court interpretations of municipal powers. There are financial limitations on the administration. There are citizen powers to hold the administration in line: elections, initiative, referendum, and recall procedures. If broad, general powers granted by a charter result in abuses, the citizens will likely amend the charter quickly to restrict those powers; in contrast, it may be more difficult to remove restrictions on the powers granted by a charter once those restrictions are in place.

Required Charter Provisions

Initiative, Referendum, and Recall Procedures. The act requires the charter to contain initiative, referendum, and recall procedures; Section 5 of Article XX and Section I of Article V of the Colorado Constitution similarly requires the charter to contain initiative and referendum procedures. See page 33 of this handbook for a brief discussion of the problems concerning the content of these provisions.

Continuing, Amending, or Repealing Existing Ordinances. Section 4 of Article XX of the Colorado Constitution requires the charter to contain a provision for continuing, amending, or repealing ordinances in force at the time the charter is adopted.

Prefatory Synopsis. (Although a prefatory synopsis is probably not a charter provision, it is included here for the sake of convenience.) Section 4 of Article XX requires that a prefatory synopsis be written for the charter.

Restrictions on Charter Provisions

Tax Rate. No charter or charter amendment can diminish the property tax rate established for state purposes by the General Assembly or in any way interfere with the collection of state taxes for state purposes.[173]

Franchises. Franchises are one area in which home rule municipalities may be subject to more restrictions than statutory municipalities. The initiative and referendum powers are guaranteed with respect to franchises even if the ordinance granting the franchise contains an emergency clause, and the signatures of not more than 5 percent of the registered electors may be required in order to order a referendum on a franchise.[174]

See page 5 for a general discussion of other restrictions on the municipality's power to adopt various charter provisions or ordinances.

Possible Charter Provisions

The following material includes some examples of provisions taken from the charters of various Colorado home rule municipalities. These examples are not offered here as suggestions for adoption but merely as examples of how some municipalities have solved, through their charter, various problems that were created for them by state statutes or constitutional provisions, or by the lack of such statutes and provisions. Because different problems are faced by different municipalities, these examples may not be applicable to any particular municipality. All municipalities preparing a home rule charter, however, should use the charter to solve at least some existing municipal problems.

The following is a discussion of only some of the possible charter provisions. Many other provisions are and should be included in charters.

Form of Government. After deciding whether the charter should be of a broad or restrictive nature, the commission should decide what form of government will be adopted by the municipality. The commission should make this decision early in its work since the form of government affects many other important charter provisions, such as the size of the council, methods of nominating and electing municipal officials, terms of office, duties of the mayor and council, etc. The following is a brief description of some possible forms of government:

- **Commission Form**. A typical commission plan of government provides for five commissioners, elected at-large by the voters, to serve as a legislative and administrative body. The board of commissioners generally controls all administrative departments within the municipality, with each commissioner heading a particular department.

  No home rule municipality in Colorado currently utilizes the commission form. This form of government has, for several reasons, been abandoned by an increasing number of municipalities elsewhere in the United States in recent years. Commissioners, though good policy makers, may not have administrative expertise. There is usually no single executive to coordinate activities of the various departments and to accept responsibility for administrative decision making. And the commission government often fails to provide sufficient checks within itself to control spending since those who appropriate funds also spend the funds.

- **Weak-Mayor Council**. This form of government began in the 19th century and also has been discarded by numerous municipalities in past years. This form is characterized by a mayor elected by the voters, an elected council that confirms departmental appointments by the mayor, separately elected department heads, and administrative boards that are either elected or appointed for overlapping terms. The problems of a weak mayor form are similar to those in the commission form. There is no single, unifying, and responsible executive; different persons may control various administrative departments, thereby creating a lack of coordination and unity of effort; and the numerous elective positions may result in voter confusion and lack of effective voter control.

- **Strong-Mayor Council**. The strong mayor-council form of government corrects many of the problems found in the weak mayor and commission forms. Both the mayor and council are elected; however, the elected mayor traditionally has the authority to hire and fire department heads without confirmation of the council,[175] to veto acts of the council, to pre-

---

[173] COLO. CONST. art. XX, § 5. This archaic restriction dates from a time when the State of Colorado actually imposed a statewide property tax of up to four mills under the authority of COLO. CONST. Art. X, §§ 2 and 11. With the adoption of the TABOR amendment, the state is now completely prohibited from imposing a statewide property tax. COLO. CONST. art. X, §20(8).

[174] COLO. CONST. art. XX, § 4.

[175] For over a century the Denver charter granted to the mayor the authority to appoint his cabinet without council confirmation. However, Denver voters approved a referred charter in 2020 requiring city council "consent" for certain mayoral executive appointments going forward. Denver Charter § 2.2.6. Likewise, Colorado Springs and Pueblo, cities that have more recently adopted strong mayor form, have included a council confirmation requirement for certain mayoral appointments.

pare the municipal budget for council approval, and to administer the budget after it has been adopted. Thus, the strong mayor plan corrects one of the most serious defects of the prior two forms by providing a single, responsible executive.

The major problems within this form arise because there may be few individuals who are both sufficiently expert administrators to run a city organization and sufficiently adept politicians to be elected. Thus, expertise may bow to political qualifications at election time. Another possible hazard in the strong mayor plan is that sufficient political differences may arise between the mayor and council to impede daily governmental functions since the mayor may veto actions of the council, and the council controls the finances necessary to the administration of the government.

- **Mayor-Administrator**. To correct some of the defects found in the strong mayor plan, some cities have experimented with the mayor-administrator form of government. The structure of the government is similar to that in the strong mayor plan except that much of the mayor's administrative responsibility is delegated to a single chief administrator who is responsible directly to the mayor. This form of government has been adopted in some of the larger cities in the nation.[176]

- **Council-Manager**. The substantial majority of home rule municipalities in Colorado have adopted a council-manager form of government. The council-manager plan has two basic features: a small elected council to decide policy questions and a professionally trained manager hired by the council and subject to dismissal by the council to carry out the day-to-day administration of the municipal government. The mayor may be elected at large or from the council but generally has a limited formal role that includes conducting council meetings, acting as the head of the government for all ceremonial purposes, and exercising some discrete administrative functions such as signing contracts and, in rare cases, emergency powers. Major advantages of this plan of government are: policymaking and administrative functions are separated; the manager provides expert guidance in administrative matters; responsibility is centralized in a single, chief executive who is held directly accountable to the council; municipal spending may be more easily controlled; and the manager, as an employee, may be readily dismissed by the council if the manager's work is unsatisfactory. Disadvantages sometimes cited for this form of government are that the municipality lacks a strong political figure in a position of leadership since the administrative executive (the manager) is appointed by the council; voter control over the municipal government may be decreased since voters elect only the council and have no direct control over the manager; and the cost of hiring a qualified manager may be relatively high.

See Appendix D for a complete list of Colorado home rule municipalities and their forms of government.

Qualifications of Elective Officials. When establishing qualifications for elective office, the charter commission might consider whether the qualification under consideration will, to any degree, help ensure the election of high quality officials. The commission should also obtain assistance to avoid establishing any qualifications that are not permitted by law.

Size of the Council. The number of councilmembers should be sufficiently large to ensure adequate representation of the citizens, yet not so large as to become unworkable.

At-Large or District Representation. Councilmembers may be elected at-large, from districts, or from a combination of at-large and districts; the size of the municipality might influence which type of representation to select. The assurance of representation from discrete neighborhoods or areas of the municipality might be balanced against the assurance that councilmembers will represent the community as a whole rather than the sometimes parochial interests of a particular district. Any applicable legal restrictions on districting should be observed as well.

Terms of Office. Many home rule charters provide staggered terms of office for councilmembers to establish some continuity in the government. The length of the terms of office for councilmembers generally range from two years to four years. A longer term of office allows councilmembers to learn their jobs and to function effectively on the basis of their knowledge. However, too long a term of office might prevent the citizens from quickly changing the complexion of their governing body if they desire to do so. Perhaps the commission should attempt to decide what term of office would provide continuity and stability in the governing body without resulting in stagnant government and without excessively reducing the voters' control over the governing body. While a limitation on the total number of terms that may be served is now imposed by the Colorado Constitution,[177] the charter may provide a different number of terms or eliminate term limits altogether. If the charter is silent on term limits, the constitutional restriction will apply.

Filling of Vacancies. Most home rule charters provide that the city council will fill any vacancies on the council. Some charters require an election to fill vacancies where numerous vacancies exist at one time.

---

[176] This form of government is also acknowledged in Colorado statutes as an option for statutory cities, which can retain a strong mayor as chief executive and also hire an administrator to assist "as may be necessary or desirable" C.R.S. § 31-4-107(2). A handful of home rule municipalities have carried forward this kind of hybrid governance system when they adopted home rule charters.

[177] Colo. Const. art. XVIII, § 11.

Powers of the Council. This is one of the charter sections in which the commission's decision on the general or restrictive nature of the charter is important. If the commission attempts to itemize the powers of the city council it may inadvertently omit important powers or phrase specific grants of power in too restrictive a manner. Most recent home rule charters include broad grants of power to the council and, for reasons expressed earlier in this handbook, a broad grant would appear advisable.

Mayor. Any decisions relating to the office of mayor depend largely on the form of government selected by the commission. Traditionally, under a council-manager plan, the mayor was often selected by the city council from its own members to preside at council meetings and perform mostly ceremonial functions. As of 2022, however, only eighteen home rule municipalities in Colorado retained this system for selecting the mayor. Instead, the overwhelming trend in home rule charters that have been adopted or amended in recent years has been toward popular election of the mayor at-large, even in a council-manager form of government where the city manager continues to run the day-to-day operations of the municipality.

In a mayor–council plan, the mayor is normally elected at-large from the municipality. The mayor's powers and duties will necessarily be more extensive than those of a mayor in the council–manager plan because he or she is charged with the administration of the municipal government, in much the same way as the president or a governor acts as the chief executive officer of the federal government or a state government respectively.

City Manager. The manager usually is appointed by vote of the council to serve at the council's pleasure. The manager's powers and duties may be defined more specifically than those of the council, and the charter may establish methods to be followed when removing the manager. The manager might not be required to be a resident of the municipality or state, at least prior to appointment, since the primary qualifications for the position are usually administrative ability and experience. In addition, some charters contain a provision specifically defining the relationship between the council, mayor, and the city manager in order to prevent the mayor or council from interfering with the administrative functions of the municipal government.

Election Procedures. While the Colorado Municipal Election Code does not apply to a home rule municipality, the code does provide that the municipality may adopt it in whole or in part.[178] Because of the comprehensive and modern nature of the Election Code, many home rule municipalities have elected to adopt its provisions with only minor variations. In this regard, whenever the commission considers adopting state statutes or constitutional provisions in the charter, care should be taken to indicate that these statutes or provisions are adopted either with or without future amendments. If the charter does not mention future amendments, a question may later arise as to whether future statutory or constitutional amendments apply to the municipality.

The charter often names the municipal election date. Many Colorado home rule charters require that the municipal election be held in odd-numbered years. Because state and federal elections are held in even-numbered years, holding municipal elections in odd-numbered years may allow the voters an opportunity to concentrate more closely on local problems, issues, and candidates. After the adoption of the TABOR amendment in 1992, the state and county clerks began to conduct odd-year elections on the first Tuesday in November of odd-numbered years.[179] State laws were also amended to allow municipalities to conduct "coordinated elections" with the state and the counties.[180] Thus, November of odd years has become an increasingly popular time for home rule municipalities to conduct their regular biennial elections.[181]

Other election-related issues that may be resolved in the charter are methods of establishing election precincts, procedures for calling special elections (some home rule charters provide that special elections may be called by resolution rather than by ordinance), hours of voting during elections, and the establishment of an election commission.

Administrative Organization. This is another area where the charter provision should be worded generally, rather than specifically. That is, the charter might specify the methods of establishing administrative departments and identify the person—manager or mayor—who shall supervise and control the administrative departments.

However, a charter that itemizes the various departments, their duties, functions, and organization might seriously impair the ability of the chief administrator or council to change the administrative structure to meet problems as they arise. It should be possible to alter the administrative organization quickly to ensure efficient municipal administration as the municipality's needs change.

---

178 C.R.S. § 31-10-1539(2).

179 C.R.S. §§ 1-41-101, et seq.

180 C.R.S. § 1-7-116.

181 Additionally, November of odd-numbered years was always the regular biennial election date for statutory cities. C.R.S. § 31-1-101(10)(a). Therefore when a statutory city adopts a home rule charter, the logical choice is to retain the same election date. By the same token, the first Tuesday in April of even number years has always been the regular biennial election date for a statutory town, and therefore when many statutory towns have adopted home rule charters they have chosen to retain the April date.

Boards and Commissions. If boards and commissions are to be established, it again might be best not to go into great detail in the charter regarding the powers, duties, qualifications of members, etc. of the boards and commissions. The charter may be phrased in general language, to be supplemented later by ordinance, and perhaps should be worded so as to permit the governing body to add or delete boards and commissions as the need arises.

Ordinances and Resolutions. Most home rule charters contain a provision stating when the council must act by ordinance and when it may act by resolution or motion. Often, certain actions are required to be taken only by ordinance, e.g., creating an indebtedness, levying a tax, and establishing a rule which includes a penalty if violated.

Some municipalities have found that publication costs constitute a rather large portion of their annual budget. As a result, some charters provide that the title of an ordinance and a statement that the ordinance is on file in the clerk's office for public inspection is sufficient publication. Some charters also provide that copies of the ordinance will be posted in public places within the municipality. The charter also may allow for publication of notices and ordinances in a more cost-efficient manner than that dictated by state statute. This charter provision is an example of how the charter can be used to solve some of the problems existing for the municipality under present state statutes.

Several of the older charters contain provisions stating that ordinances and resolutions shall be confined to one subject clearly expressed in the title.[182] Omission of such a provision may be sound; however, with such a provision, if the governing body errs and places more than one subject in the ordinance, the validity of the ordinance may be attacked and the costs of adopting ordinances under this type of provision may be increased since the municipality might have to adopt a larger number of ordinances.

In the area of emergency ordinances, the charter commission faces the problem of establishing procedures that will allow the governing body to act quickly, yet prevent arbitrary action. Some charters contain a provision that an emergency ordinance may be enacted at either a regular or special meeting by an affirmative vote of a greater number of councilmembers than is required for a nonemergency ordinance. The ordinance then takes effect on the date of passage.

The commission might consider including a provision in the charter to establish, or to allow the council by ordinance to establish, procedures to be followed when adopting codes by reference.

The charter also might include requirements for codifying ordinances; establishing the number of votes necessary for adopting ordinances, resolutions, and motions; and the basic ordinance form.

Personnel. The commission may include a charter provision providing basic requirements for the establishment of a personnel system. It might again be advisable to leave the detail of the system to ordinance.

Legal and Judicial Departments. The charter might contain a provision establishing the method of selecting the municipal attorney, and who the municipal attorney represents. If the attorney represents more than just the council (i.e., the mayor, manager, or department heads), practical and ethical problems may arise in the event of a conflict between one of these administrative officers and council. In addition, the charter might outline the procedures to be followed when hiring special counsel. The charter also should include a provision establishing the municipal court.

Article 10 of Title 13, C.R.S. as amended, relates to the establishment of municipal courts and contains a section allowing home rule cities to supersede any section of the article except for those "provisions relating to the method of salary payment for municipal judges ... the right to a jury trial for petty offenses ... rules of procedure promulgated by the supreme court, and appellate procedure" and other provisions.[183]

Budget, Control, and Financing. Most present charters contain provisions relating to the scope of the annual budget, methods to be used when adopting the budget, and requirements for public hearings prior to the adoption of the budget. In addition, charters often contain general provisions establishing various types of funds. Unnecessary details should not be required to transfer money among the various funds because transfers are not easily accomplished under present state statutes. Such a review may help the municipality avoid provisions that unnecessarily restrict future solutions to fiscal problems and increase financing costs.

Municipal Borrowing. The commission should provide reasonable limitations on borrowing without being too restrictive. It might be noted that there are outside limitations on a municipality's borrowing power in that, if the municipality is not consid-

---

[182] The Colorado General Assembly has long operated under a "single subject rule" for state legislation and, via a 1994 constitutional amendment; this rule was extended to statewide initiatives and referenda. COLO. CONST. art. V, § 1(5.5). The state's single subject rule, particularly as applied to initiated legislation, has been subject to considerable litigation.

[183] C.R.S. §§ 13-10-103 to 126; *see also* City of Thornton v. Horan, 556 P.2d 1217 (Colo. 1976); Hardamon v. Mun. Ct., 497 P.2d 1000 (Colo. 1972); Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. App. 1993) (discussing home rule authority related to municipal judges).

ered a sound financial risk, the municipality's bonds may not be purchased. The charter itself may contain general provisions creating the methods or procedures to be followed when issuing or refunding the various types of bonds, and setting certain general limitations on bond sales. Bond counsel assistance in this area may be helpful.

The authority of home rule municipalities to structure their own charter provisions for debt and borrowing was curtailed considerably by the adoption of the Taxpayer Bill of Rights (TABOR) amendment in 1992. TABOR requires virtually any "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" to be put to a vote of the people. It also specifies how and when such an election must be conducted.[184]

Eminent Domain. If the commission decides to include a charter section on eminent domain, it should consider wording the section to state that the municipality will have the power of eminent domain both inside and outside municipal boundaries. If this is not clearly stated, the municipality's powers might be unnecessarily restricted by court interpretation.

[184] Colo. Const. art. X, § 20(3), (4)(b).

CHAPTER V
PUBLICIZING HOME RULE

INTRODUCTION

The approval of a home rule charter is not guaranteed. A number of Colorado municipalities have, in fact, rejected home rule as a concept in the first election. One individual, who was instrumental in the initiation of home rule for a Colorado municipality that eventually rejected the idea, stated that public apathy was the primary reason for the rejection. Home rule as a philosophy of government may not generate the election excitement or interest as does an individual contest for an elective office. In addition, in the municipality rejecting home rule, those persons initiating it were overconfident, and many people who favored the idea simply did not bother to vote because they assumed it would be approved by others.

Home rule represents a change from the existing system of government. There are people who oppose change itself, and little can be done to encourage these people to consider home rule thoughtfully. However, there are others who oppose change because they are satisfied with the present system. There are also those who assume that home rule will cost more. These people may support home rule if they can be shown that the proposed change is needed and will result in an improved local government.

For all of the above reasons, those involved and interested in the adoption of a home rule charter must spend a considerable amount of time and effort in educating local citizens on the need for a home rule charter and on the advantages of a particular charter proposed for the community. The effort to win public understanding and acceptance of home rule must begin with the group or groups planning to initiate the concept; and the effort to win public understanding and acceptance of a particular home rule charter must begin the day the charter commission is elected.

Those supporting home rule should attempt to inform the municipality's citizens of the need for a change and of the way in which a particular proposed charter will fulfill that need. Limitations in the present system of government may be emphasized; the advantages of home rule in general, and of a particular proposed charter, may be emphasized; and the citizens should be shown how home rule will benefit them as well as their community.

The following material offers some methods that may be used to obtain public acceptance and understanding of home rule.

GENERAL SUGGESTIONS

Those supporting home rule should attempt to plan an educational program to reach all segments of the community.

- Utilize the municipality's website and other social media platforms to publicize the work of the charter commission and to educate the public generally on the subject of home rule.
- Hold both neighborhood and general public meetings on home rule.
- Distribute material and discuss home rule on a door-to-door basis.
- Obtain the cooperation of the local newspaper, issue press releases, and if possible, run a series on the various aspects, advantages, and disadvantages of home rule.
- Create a speaker's bureau to talk to all community groups about home rule.
- If possible, ask local TV or radio stations for time to conduct interviews and debates on home rule.

- Obtain endorsements from as varied a portion of the public as possible: municipal officials, social, civic, and fraternal organizations, business organizations, etc.
- Contact local schools in order to develop classroom projects on home rule, particularly for civics classes.
- Print and distribute pamphlets and other material including re-printed articles, editorials, endorsements, "Questions and Answers" booklets, and simple fliers.
- Immediately before the elections, distribute sample ballots and create a "get out the vote" campaign.
- Observe all applicable limitations on involvement by municipalities and officials and the expenditure of public funds in election campaigns.[185]

SUGGESTIONS FOR THE CHARTER COMMISSION

The general methods of publicizing home rule should be used prior to the first election to form a charter commission and should also be used to publicize the work of the charter commission. In addition, the following suggestions are offered specifically to the commission.

- The charter commission should invite all citizen groups—including labor, business, professions, churches, civic groups, and veterans groups—to submit suggestions and to send representatives to the public hearing or hearings on the charter.
- At least one public hearing should be held after completing the draft of the proposed charter so that the commission can explain the charter and gather information on the public's attitude toward specific charter provisions.
- Municipal officials and employees should be consulted to obtain suggestions and advice from persons experienced in the operation of municipal government.
- The public should be informed concerning the progress of the commission's work. Perhaps a tentative charter draft could be published with an invitation for public comments and criticisms. This would enable the commission to make any necessary adjustments in the charter, thus improving its chance for success.
- The commission should encourage the development of a broad organization of individual citizens and groups to promote the formulation and adoption of a sound charter.
- Create and distribute material to show how the proposed charter will solve problems existing in the present governmental structure and how it will benefit the citizens as individuals as well as the community as a whole. Avoid partisan politics, and instead, attempt to obtain support from a coalition of the leading political figures in the municipality.

[185] *See, e.g.,* C.R.S. § 1-45-117.

CHAPTER VI
SPOTLIGHT ON FOUR AREAS OF LOCAL CONCERN—EMPLOYMENT, TAXATION, LAND USE, AND EMINENT DOMAIN

INTRODUCTION

Under Article XX, Section 6 of the Colorado Constitution, home rule municipalities have the power to regulate matters of local and municipal concern, confident that their regulations cannot be superseded by conflicting state laws. While some such matters are easily labeled, others are more complex, raising controversy over their classification as local, statewide, or mixed. Employment, taxation, land use, and eminent domain are four areas in which home rule prerogatives have been commonly litigated through the years. Following is a discussion of home rule powers in these four areas.

EMPLOYMENT

The landmark 1990 case of *Denver v. State*[186] stands as only one of many decisions that touch upon issues related to employment in home rule municipalities. Notwithstanding the fact that an employee may work for a home rule municipality, some employment matters are governed by state law. While fundamental employment issues related to qualifications, tenure, powers, and duties of home rule municipal employees and officers are consistently found to be matters of local concern, certain aspects of compensation are subject to state laws of general applicability.

Article XX, Section 6 expressly grants to the people of a home rule municipality the authority to regulate the method of selection and tenure of an officer designated to carry out the duties of a specific position, even though the officer might be required to perform duties that are of statewide concern.[187] Therefore, a home rule charter provision relating to tenure does not interfere with any state statute because power over tenure is expressly delegated to home rule cities.[188] A charter provision for the discipline or termination of employees in a home rule municipality also has been found to take precedence over any statutory or common law rule to the contrary, as it too is solely a matter of local concern.[189] Section 6 grants home rule municipalities "exclusive control over creation and terms of municipal offices."[190]

---

186 City & Cnty. of Denver v. State, 788 P.2d 764 (Colo. 1990).

187 City & Cnty. of Denver v. Rinker, 366 P.2d 548, 551 (Colo. 1961).

188 Coopersmith v. City & Cnty. of Denver, 399 P.2d 943 (Colo. 1965).

189 Ratcliff v. Hite, 541 P.2d 88, 90 (Colo. App. 1975); Roybal v. City and County of Denver, 436 P. 3d 604 (Colo. App. 2019).

190 Int'l Bhd. of Police Officers v. City & Cnty. of Denver, 521 P.2d 916, 917 (Colo. 1974) (noting that the ability of home rule municipalities to control the "terms" of elected officers was superseded by the 1994 adoption of a constitutional amendment providing uniform term limitation for all local elected officials including those in home rule municipalities); Colo. Const. art. XVIII, § 11.

Article XX, Section 2 vests in a home rule municipality the exclusive control over public officers, their powers, and duties.[191] Other sections of Article XX make it clear that a municipality's power to determine the limits of its public officers' authority, by charter or amendment to its charter, is all exclusive.[192]

On the other hand, the Colorado courts have acknowledged the distinction between basic home rule authority to determine whom to employ and under what circumstances, and statewide concern over certain aspects of compensation incidental to employment. For example, in *City of Colorado Springs v. Industrial Commission*, the court held that, while the determination of whether a city employee should be reinstated in a city job may be a matter of local concern, the determination of whether an employee is subject to unemployment compensation is a matter of statewide concern.[193]

Therefore, not every aspect of employment in home rule municipalities is immune from state regulation. Courts have found there to be an overriding state interest when reviewing conflicts between state law and local regulation in the areas of fire and police pensions,[194] unemployment compensation,[195] and workers compensation.[196] These cases are consistent in that they dealt with a particular aspect of employment (i.e., certain forms of compensation that are purely incidental to the employment relationship) that is not enumerated specifically as a matter of local and municipal concern in Article XX, Section 6 of the Colorado Constitution. In comparison, every reported case to date addressing authority of home rule municipalities to regulate other personnel matters has come down on the side of home rule authority.

In addition to *Denver v. State*, confirming the authority of home rule municipalities to establish residency requirements for their own employees without interference from the state, other recent decisions have underscored the essential home rule prerogative over employment matters. For example, the Supreme Court held that employment qualifications for certain law enforcement personnel in a home rule municipality are matters of local concern, and a municipality could establish training requirements different from those set forth in statute.[197] The Court of Appeals held that employee health benefits in general and "the power to grant health insurance benefits to spousal equivalents" in particular are matters of local concern, and home rule municipalities need not rely on state statutes for authority to offer group health insurance policies.[198]

TAXATION

The adoption of the Taxpayer Bill of Rights (TABOR) amendment in 1992 imposed uniform tax and spending limits on all local governments, including home rule municipalities.[199] Prior to TABOR, home rule municipalities exercised considerable latitude to formulate their own tax structure. For example, they could impose real estate transfer taxes; however, TABOR now bans new real estate transfer taxes.[200] Nevertheless, even in the post-TABOR era, home rule municipalities still may exercise broader taxing authority than do statutory municipalities.

In 1965, the Colorado Supreme Court upheld the authority of a home rule municipality to adopt a sales and use tax under the home rule taxing power conferred by Article XX of the Colorado Constitution.[201] As a result, home rule municipalities have broad sales and use tax authority.

Among the advantages of levying a sales tax under home rule powers rather than pursuant to the state statutes are:

- The sales tax base need not be uniform with the state sales tax (numerous home rule municipalities have a broader tax base or fewer exemptions).

---

191 Int'l Bhd. of Police Officers v. City & Cnty. of Denver, 521 P.2d 916, 917 (Colo. 1974).

192 Int'l Bhd. of Police Officers v. City & Cnty. of Denver, 521 P.2d 916, 917 (Colo. 1974).

193 City of Colo. Springs v. Indus. Comm'n, 749 P.2d 412, 416 (Colo. 1988).

194 *See* City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1981); Conrad v. City of Thornton, 553 P.2d 822 (Colo. 1976); Huff v. Mayor of Colo. Springs, 512 P.2d 632 (Colo. 1973); Police Pension and Review Bd. v. McPhail, 338 P.2d 694 (Colo. 1959).

195 *See* City of Colo. Springs v. Indus. Comm'n, 749 P.2d 412 (Colo. 1988).

196 *See* City & Cnty. of Denver v. Thomas, 491 P.2d 573 (Colo. 1973).

197 Fraternal Order of Police v. City & Cnty. of Denver, 926 P.2d 582 (Colo. 1996).

198 Schaefer v. City & Cnty. of Denver, 973 P.2d 717 (Colo. App. 1998).

199 COLO. CONST. art. X, § 20.

200 COLO. CONST. art. X, § 20(8)(a).

201 Berman v. City & Cnty. of Denver, 400 P.2d 434 (Colo. 1965).

- Collection by the state Department of Revenue is optional (many home rule municipalities collect their sales taxes locally and have more extensive tax enforcement programs).

Additionally, home rule municipalities are not limited to imposing use taxes only on motor vehicles and building and construction materials as statutory municipalities are.[202] Consequently, many apply their use tax as broadly as their sales tax.[203]

Statutory municipalities are authorized but not required to exempt from the municipal sales tax the sales of certain machinery and machine tools; sales of electricity and other specific fuels sold to occupants or residents for the purpose of operating residential fixtures and appliances which provide light, heat, and power for the residences; and certain occasional sales by nonprofit entities. Home rule municipalities on the other hand, pursuant to Article XX, may determine their own exemptions.[204]

In *Winslow Construction v. City and County of Denver*, the Colorado Supreme Court held that section 29-2-109(2) of the Colorado Revised Statutes cannot be applied to curtail application of a home rule municipality's use tax.[205] Section 29-2-109(2) exempts from local taxation the use of personal property that occurs more than three years after its most recent sale if the property was used significantly in the state within those three years. Denver's municipal code required payment of a use tax with no such time limitations. The court found that the code provision dealt with a matter of local concern, and therefore preempted the conflicting state statute. IIn 2022, the Colorado General Assembly enacted a law that would exempt from home rule taxes any building materials purchased by private contractors for use in public school construction in House Bill 1024.

Although the power to levy and collect sales and use taxes is a matter of purely local and municipal concern under Article XX of the Colorado Constitution,[206] constitutional limits minimize the ability of a home rule municipality to impose certain tax liabilities, such as a use tax on a business that delivers merchandise to residents in a municipality but that does not maintain a store or office in the municipality and does not solicit business from municipal residents.[207] In addition, while home rule municipalities may determine their own administrative procedures relative to sales and use tax collection, certain matters relating to appeals to the courts are of statewide concern and thus are subject to state statutes or court rules.[208]

Home rule municipalities enjoy broad authority to impose so-called "occupation taxes" on business activities. Like statutory municipalities, home rule cities and towns can draw upon the broad authority set forth in statute "to license, regulate, and tax any and all lawful occupations and places of business."[209] However, the authority to impose an occupation tax in a home rule municipality also can be derived from the municipality's own charter, as illustrated in the cases upholding the authority to impose a "head tax" on employees of businesses operating within the municipality.[210] Home rule status also gives a city or town the flexibility to creatively structure other types of taxes and fees, even in the absence of statutory enabling authority. Examples of home rule revenue measures upheld by the courts include an excise tax on new development charged on a per square foot basis,[211] a transportation impact fee,[212] storm water utility charges,[213] and a "waste reduction fee" on disposable paper bags.[214]

In the area of property taxation, home rule municipalities again enjoy greater flexibility compared to their statutory counterparts in that they are not constrained by the statutory limit on annual increases in property tax revenue.[215] However, the charters of some home rule municipalities contain property tax limitations similar to the statute, if not more restrictive. More-

---

202 *See* C.R.S. § 29-2-109.

203 When a statutory municipality adopts a home rule charter and seeks to expand its use tax base in order to enhance its revenue, the municipality should consider whether voter approval is necessary under TABOR. *See* HCA Health-One, LLC v. 197 P.3d 236 (Colo. App. 2007).

204 COLO. CONST. art. X; C.R.S. § 29-2-105 (2016).

205 Winslow Constr. Co. v. City & Cnty. of Denver, 960 P.2d 685 (Colo. 1998).

206 Sec. Life & Accident Co. v. Temple, 593 P.2d 1375 (Colo. 1979) (reaffirming the decision in Berman v. Denver, 492 P.2d 63 (Colo. 1972)).

207 Associated Dry Goods v. City of Arvada, 593 P.2d 1375 (Colo. 1979).

208 *See* Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982); Sky Chefs v. City & Cnty. of Denver, 653 P.2d 402 (Colo. 1982); Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991); Winslow Constr. Co. v. City & Cnty. of Denver, 960 P.2d 685 (Colo. 1998); MDC Holdings, Inc. v. Town of Parker, 223 P.3d 710 (Colo. 2010).

209 C.R.S. § 31-15-501(1)(c).

210 City & Cnty. of Denver v. Duffy Storage & Moving Co., 450 P.2d 339 (Colo. 1969).

211 Cherry Hills Farm, Inc. v. City of Cherry Hills Village, 670 P.2d 779 (Colo. 1983).

212 Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989).

213 Zelinger v. City & Cnty. of Denver, 724 P.2d 1356 (Colo. 1986); City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

214 Colorado Union of Taxpayers Foundation v. City of Aspen, 418 P.3d 506 (Colo. 2018).

215 C.R.S. §§ 29-1-301 to 123. (2016).

over, although home rule cities and towns are expressly authorized by Article XX to engage in "the assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes,"[216] this authority is apparently subject to overriding constitutional principles requiring uniformity and equalization of property taxation.[217] Thus, home rule municipalities work directly with the property tax assessment and collection system administered by the county assessor and county treasurer as would any other local government. Moreover, all cities and towns, statutory and home rule alike, are subject to the election requirements of TABOR before increasing any tax or tax base or levying any new taxes.

Even prior to the adoption of TABOR, the authority of home rule municipalities to establish taxes was not absolute. In particular, the courts had held that the imposition of income taxes (e.g., a tax upon a business based directly on the gross receipts of the business) was the exclusive prerogative of the state under Article X, Section 17 of the Colorado Constitution.[218] TABOR reconfirmed this prohibition against local government income taxes.[219]

LAND USE

In the 1920s, the very earliest court cases in Colorado ratifying zoning as a legitimate use of the police power arose out of the state's original home rule municipality, Denver.[220] Significantly, the city had adopted land use regulations before there was any state enabling legislation for zoning and subdivision regulation by local governments. The court was content in finding, however, that the power to engage in this sort of regulation derived from Denver's own charter and was not dependent on some grant of permission by the General Assembly.

Naturally, in exercising its zoning authority, Denver was bound by higher constitutional principles relating to due process and property rights. Even from these very earliest cases, claims were made based upon theories of "vested rights" and "taking of property without just compensation." However, while the mandates of the constitution are one thing that no home rule municipality can deny, the mandates of the Colorado General Assembly as expressed through state statutes are quite another. The Colorado courts recognized this fact in the early 1970s and began to hand down numerous decisions indicating that zoning will generally be considered a matter of local concern and that statutory procedures related to zoning will not apply in a home rule municipality to the extent those procedures are contradicted by local law.

Two cases decided in 1971 dealt directly with conflicts between statutory requirements and local procedures. In both, property owners claimed that local zoning actions should be invalidated due to the home rule municipality's failure to follow the statutory procedure. In one case, the city had failed to use a statutorily mandated supermajority vote to approve a rezoning.[221] In the other, the city had not abided by a statutory requirement that rezonings be done in accordance with a comprehensive plan.[222] In each case, the court held that home rule cities could apply their own locally adopted procedures in lieu of the statutory requirements, and failure to comply with the mandates of state enabling statutes was not fatal to the cities' respective zoning actions.

In another important case decided about the same time, the Colorado Supreme Court made this powerful statement:

> *The General Assembly has power to legislate zoning regulations applicable to statutory cities. Where, however, the Charter of a home rule city exercises the power delegated to it by Article XX, Section 6 as to matters of purely local concern, the legislature has no power."*[223]

On most occasions when the courts have held zoning within a home rule municipality to be a matter of local concern, they have done so not to resolve disputes between local ordinances and state statutes but to simply underscore that the court need look no further than the municipality's own charter as the source of authority for whatever the city or town has done.

---

216 COLO. CONST. art. XX, § 6(g).

217 COLO. CONST. art. X, § 3; *See also* Rancho Colo., Inc. v. City of Broomfield, 586 P.2d 659 (Colo. 1978); Cherry Hills Farm Inc. v. City of Cherry Hills Village, 670 P.2d 779 (Colo. 1983).

218 City & Cnty. of Denver v. Sweet, 329 P.2d 441 (Colo. 1958); Minturn v. Foster Lumber Co., 548 P.2d 1276 (Colo. 1976); Mountain States Tel. & Tel. Co. v. City of Colo. Springs, 572 P.2d 834 (Colo. 1977). *But see* Town of Eagle v. Scheibe, 10 P.3d 648 (Colo. 2000) (distinguishing municipal occupation taxes and excise taxes from income taxes).

219 COLO. CONST. art. X, § 20(8)(a).

220 Colby v. Bd. of Adjustment, 255 P. 443 (Colo. 1927); Averch v. City & Cnty. of Denver, 242 P. 47 (Colo. 1925).

221 Roosevelt v. City of Englewood, 492 P.2d 65 (Colo. 1971).

222 Moore v. City of Boulder, 484 P.2d 134 (Colo. 1971).

223 Service Oil Co. v. Rhodus, 500 P.2d 807, 812 (Colo. 1972) (emphasis in original).

In this line of cases, the term "zoning" is construed quite broadly to include a wide variety of land use regulations, including restriction or elimination of nonconforming uses,[224] access permitting,[225] development permitting,[226] hillside preservation regulations,[227] sign codes,[228] and basic zone district regulations.[229]

Even in cases in which the courts have held certain specialized areas to be a matter of "mixed statewide and local concern," the courts have not disturbed the well-established principle that zoning generally will be considered within the province of local legislative discretion. For example, the Colorado Supreme Court has partially allowed the General Assembly to occupy the field of sign regulation along state highways within municipalities only because there is proven substantial state interest in this area.[230] Namely, due to certain requirements of the Federal Highway Beautification Act and contracts entered into between the state and the federal governments, the state needed to ensure a certain degree of uniformity in the regulation of billboards upon federal aid highways at the risk of losing federal highway funds.

Similarly, in the narrow area of oil and gas drilling—that is, regulation of a resource that recognizes no jurisdictional boundaries and has been regulated at the state level since 1915—the Colorado Supreme Court held in 1992 that the state could preempt a home rule ordinance that totally prohibited such drilling within a particular municipality, but left open the possibility that municipalities could still regulate some aspects of the industry that fell within the realm of traditional land use powers.[231] Years later the Court reached a similar conclusion when it ruled that both a total ban on hydraulic fracturing and a five-year moratorium on fracking were in "operational conflict" with state law.[232] However, in all of these cases the courts treated oil and gas regulation as a matter of mixed state and local concern, not a field that is entirely preempted by the state, with a nod toward the traditional role municipalities play in basic land use regulation. Eventually, the Colorado General Assembly adopted legislation to clarify and strengthen local authority to regulate "the surface impacts of oil and gas operations" under their land use powers, while stopping short of authorizing municipalities to totally ban drilling or fracking within their jurisdictions.[233]

In carving out these narrow exceptions to the rule that zoning and land use generally will be considered a matter of local concern, the court focused extensively on peculiar aspects of the particular activities being regulated in each case.

The Colorado General Assembly regularly debates and sometimes adopts legislation to preempt home rule municipalities in the area of land use regulation, growth management, and private property rights. In one example, the General Assembly in 1975 adopted special zoning protections for group homes for the developmentally disabled and purported to apply the statutory mandate statewide.[234] The Colorado Supreme Court twice flirted with the question of whether this mandate could truly bind home rule municipalities but ultimately decided these cases on other grounds.[235]

On a subject closely related to land use regulation, in 2000, the Colorado Supreme Court held that the promotion of affordable housing is a matter of mixed state and local concern.[236] However, the court went on to determine that an "inclusionary zoning" or "housing mitigation" provision adopted as a part of a municipality's regulations on new development was in conflict with a 1981 state statute forbidding municipalities from engaging in "rent control." The court justified its holding in part on the theory that the ordinance was a form of "economic regulation," not land use regulation. Subsequent amendments to state statutes have clarified that inclusionary zoning requirements to promote affordable housing, along with voluntary agreements with developers to provide affordable housing do not violate the 1981 prohibition on "rent control."[237]

---

224 City of Greeley v. Ells, 527 P.2d 538 (Colo. 1974); Service Oil Co. v. Rhodus, 500 P.2d 807, 812 (Colo. 1972).

225 City of Colo. Springs v. Smartt, 620 P.2d 1060 (Colo. 1981).

226 Sherman v. City of Colo. Springs, 680 P.2d 1302 (Colo. App. 1983).

227 Sellon v. City of Manitou Springs, 745 P.2d 229 (Colo. 1987).

228 VFW v. City of Steamboat Springs, 575 P.2d 835 (Colo. 1978).

229 Zavala v. City & Cnty. of Denver, 759 P.2d 664 (Colo. 1988).

230 City of Fort Collins v. Root Outdoor Adver., 788 P.2d 149 (Colo. 1990); Nat'l Adver. Co. v. Dep't of Highways, 751 P.2d 632 (Colo. 1988).

231 Voss v. Lundvall Bros., Inc., 830 P.2d 1061 (Colo. 1992); *see also* Town of Frederick v. North American Resources Co., 60 P.3d 758 (Colo. App. 2002).

232 City of Longmont v. Colorado Oil and Gas Ass'n., 369 P.3d 573 (Colo. 2016); City of Fort Collins v. Colo. Oil & Gas Ass'n., 369 P.3d 586 (Colo. 2016).

233 C.R.S. § 29-20-104(1)(h) (enacted by Senate Bill 19-181).

234 C.R.S. § 31-23-303(3).

235 Glennon Heights, Inc. v. Central Bank and Trust, 658 P.2d 872 (Colo. 1983); Adams Cty. Ass'n for Retarded Citizens, Inc. v. City of Westminster, 580 P.2d 1246 (Colo. 1978).

236 Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30 (Colo. 2000).

237 *See* C.R.S. § 29-20-104(e.5); § 38-12-301.

In 1987, the General Assembly adopted the Vested Property Rights Act[238] and purported to compel all municipalities to establish a procedure for allowing developers to obtain a three-year vested right upon the approval of a "site specific development plan." Even while adopting local ordinances to implement the act, a number of home rule municipalities expressed doubt about whether or not the mandates of this law could legitimately be applied to them. The act was amended in 1999, carrying forward the declaration of statewide concern contained in the original bill. At the same time, the General Assembly adopted another piece of property rights legislation on the subject of "regulatory takings," declaring "the fair, consistent, and expeditious adjudication of disputes over land use in state courts in accordance with constitutional standards is a matter of statewide concern."[239] To date, the applicability of these laws to home rule municipalities has not been tested in court.[240]

It would be noted that what may appear to a municipality as a zoning issue, may be viewed by the courts otherwise. For example, a home rule municipality may claim a right to impose a land use restriction on condominium units under its general zoning power. But the courts may analyze the matter as implicating the property rights of condominium owners for which special state laws apply, particularly the Colorado Common Interest Ownership Act. Then, if the regulation of condominiums in particular is viewed as a matter of mixed state and local concern, any conflict between the statute and the local laws is resolved in favor of state preemption.[241]

In a second example, the Colorado Supreme Court has held that an ordinance prohibiting more than two juvenile sex offenders from living together in a residential zone district should not be analyzed as a land use regulation, but instead should be viewed as an intrusion into the state's unfettered authority to place juvenile sex offenders in foster care under the extensive set of state laws regulating the statewide foster care system.[242] By contrast, the Court held in another case that a home rule municipality's land use authority included the power to place residency restrictions on adult registered sex offenders. It helped in this case that the statutes governing the statewide sex offender registration system specifically included a provision saying local authorities were not required to accept a registration address that did not comply with local laws.[243]

Once again, home rule in the land use area is not absolute. Courts will analyze the question of "local" versus "statewide" concern on a case by case basis applying the *Denver v. State* criteria. Especially when a municipality is acting beyond its own boundaries, its home rule authority (including the power to regulate the use of its own property) can and will be circumscribed by state statutes.[244] Moreover, home rule does not confer upon municipalities any particular standing to challenge the land use regulations of another political subdivision of the state.[245] Similarly, no home rule municipality has ever challenged the principle that state annexation statutes must apply equally to all cities and towns regardless of home rule status.[246]

Nevertheless, when a home rule city or town administers zoning and land use regulation within its own jurisdiction, the weight of tradition and legal precedent indicates that the courts will view most land use and zoning regulations as being matters of local concern to be addressed as the municipality sees fit.

---

238 C.R.S. §§ 24-68-101 to 106.

239 C.R.S. §§ 29-20-201 to 205.

240 Note, however, that the Colorado Supreme Court subsequently interpreted the regulatory takings legislation in a manner that was entirely consistent with constitutional jurisprudence on the same subject. Thus home rule municipalities are impacted no more by this statute than they would be otherwise when faced with a regulatory takings claim arising under the federal or state constitution; *See* Wolf Ranch, LLC v. City of Colorado Springs, 220 P.3d 559 (Colo. 2009).

241 Town of Vail v. Village Inn Plaza-Phase V Condominium Association, 498 P.3d 1123 (Colo. App. 2021)

242 City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003).

243 Ryals v. City of Englewood, 364 P.3d 900 (Colo. 2016).

244 City & Cnty. of Denver v. Bd. of Cnty. Comm'rs of Grand Cnty., 782 P.2d 753 (Colo. 1989).

245 City of Colo. Springs v. Bd. of Cnty. Comm'rs of Eagle Cty., 895 P.2d 1105 (Colo. App. 1994).

246 Two reported decisions on the subject of annexation are worth noting, however. In Minch v. Town of Mead, 857 P.2d 1054 (Colo. App. 1998), the court confirmed the overall supremacy of the state over annexation laws, but upheld a local law that went beyond the Municipal Annexation Act and imposed a town-wide voter approval requirement on all annexations. In Wal-Mart Stores, Inc. v. Pikes Peak Rural Transportation Authority, 434 P.3d 725 (Colo. App. 2018), cert denied (2019), the court held that a city could not invoke its home rule authority to argue that land annexed into the municipality is automatically detached from a regional transportation authority. State law exclusively defines the effect annexation has on the jurisdiction of other political subdivisions.

EMINENT DOMAIN

For many years, on a variety of occasions, and in a variety of contexts, the Colorado courts have held that the eminent domain powers of home rule municipalities are derived directly from the constitution and are therefore immune from whatever strictures or prohibitions the General Assembly may try to impose through statute.

Section 1 of Article XX of the Colorado Constitution (which is incorporated by reference in section 6 of that article, and thus made applicable to all home rule municipalities) afforded the prototype home rule municipality, Denver, a broad grant of eminent domain authority, including,

> *the power, within or without its territorial limits, to … condemn … water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways, local in use and extent, in whole or in part, and everything required therefore … [and] … may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain.*[247]

By judicial construction, the breadth of this constitutional grant of authority has been expanded even further than its express terms might indicate. In 1940, the court stated, "we have no doubt that the people of Colorado intended to and, in effect did, thereby delegate to Denver full power to exercise the right of eminent domain in the effectuation of any lawful, public, local and municipal purpose."[248] Nineteen years later, the court reinforced this opinion, holding that "the powers enumerated therein are by way of illustration and not of limitation."[249]

A particular exercise of eminent domain by a home rule municipality, therefore, is not invalid simply because its purpose is other than one of those specifically enumerated in Article XX, whether it be an Air Corps Technical School,[250] "flowage easements,"[251] a sewer line,[252] an airport,[253] or water and water rights,[254] to name a few. Home rule municipalities also have full and complete authority to condemn lands for "parks and parkways"[255] and for recreational trails,[256] and to freely exercise eminent domain authority on an extraterritorial basis without regard to any statutory limitation on the distance the city may go in taking property for a municipal purpose.[257]

Unlike statutory cities and towns which derive virtually[258] any eminent domain powers they may have from enabling statutes adopted by the General Assembly, home rule municipalities need only look to Article XX and their own charters. The courts have articulated the principal that condemnation "can be had only under powers specifically granted by the legislature," but have applied this principle exclusively to statutory cities and towns.[259] As a result, any limitation on the scope of eminent domain authority on a home rule municipality must be found in its own charter or in the constitution, and Colorado home rule charters typically contain a broad reservation of any and all eminent domain powers that a municipality may possibly exercise. All of these principles were vividly illustrated in a key 2008 opinion by the Colorado Supreme Court upholding the authority of the Town of Telluride to condemn property for parks and open space just outside the boundaries of the town. The Colorado General Assembly had adopted legislation precisely targeted at preventing Telluride from acquiring the property, but Telluride prevailed in court under its home rule authority.[260]

---

247 COLO. CONST. art. XX, § 1.

248 Toll v. City & Cnty. of Denver, 340 P.2d 862 (Colo. 1959); *see also* Fishel v. City & Cnty. of Denver, 108 P.2d 236 (Colo. 1940).

249 Town of Glendale v. City & Cnty. of Denver, 322 P.2d 1053 (Colo. 1958).

250 Fishel v. City & Cnty. of Denver, 108 P.2d 236 (Colo. 1940).

251 Toll v. City & Cnty. of Denver, 340 P.2d 862 (Colo. 1959).

252 Town of Glendale v. City & Cnty. of Denver, 322 P.2d 1053 (Colo. 1958).

253 City & Cnty. of Denver v. Bd. of Cnty. Comm'rs of Arapahoe Cty., 156 P.2d 101 (Colo. 1945).

254 City of Thornton v. Farmers Reservoir and Irrigation Co., 575 P.2d 382 (Colo. 1978).

255 Londoner v. City & Cnty. of Denver, 119 P. 156 (1911).

256 Town of Parker v. Norton, 939 P.2d 535 (Colo. App. 1997).

257 City & Cnty. of Denver, v. Bd. of Cnty. Comm'rs of Arapahoe Cnty., 156 P.2d 101 (Colo. 1945).

258 *See also* COLO. CONST. art. XIV, § 7 (Noting that even statutory municipalities enjoy independent constitutional authority to exercise eminent domain for waterworks under); Town of Lyons v. City of Longmont, 129 P. 198 (Colo. 1913) (this power that cannot be impaired by any statute).

259 *See* Beth Medrosh Hagodol v. City of Aurora, 248 P.2d 732 (1952); *see also* Public Service Co. v. Loveland, 245 P. 493 (Colo. 1923); Mack v. Town of Craig, 191 P. 101 (Colo. 1920); Healy v. City of Delta, 147 P. 662 (Colo. 1915).

260 *See* Town of Telluride v. San Miguel Valley Corp., 185 P.3d 161 (Colo. 2008); Fishel v. City & Cnty. of Denver, 108 P.2d 236 (Colo. 1940); *see also* City of Thornton v. Farmers Reservoir and Irrigation Co., 575 P.2d 382, 389 (Colo. 1978).

The general principle that state statutes are superseded by home rule eminent domain authority has been demonstrated in several other contexts. The Colorado Supreme Court has found a statutory limitation on the purposes for which eminent domain may be utilized,[261] and a statutory limitation on the distance that a city or town could condemn outside its boundaries, to be inapplicable to home rule municipalities.[262] A statute requiring a city to obtain the permission of another jurisdiction when condemning property extraterritorially is of "doubtful validity,"[263] and home rule municipalities are not bound to follow any particular statutory procedure when exercising their eminent domain authority, but instead are free to select any procedure that may be available by law.[264]

One notable limitation on the authority of home rule municipalities to exercise eminent domain was illustrated in a case in which a town tried to condemn state-owned lands to conduct a feasibility study for a municipal water storage project. The court held that the general grant of eminent domain authority in Article XX does not give home rule municipalities the power to condemn state lands. Eminent domain authority is also limited by other general principles set forth in the laws of the state. For example, any taking of property under the power of eminent domain must be for a legitimate public purpose, and property cannot be taken in bad faith by a home rule municipality.[265] Even when a condemnation action is filed in good faith by a home rule municipality, a land owner may attempt to attack it on collateral grounds, for example, a claim that the municipality intends to use Great Outdoors Colorado (GOCO) money on the project when the Colorado Constitution specifically forbids GOCO money from being used to condemn property. In a 2016 case, the Town of Silverthorne successfully rebuffed this argument and the Colorado Court of Appeals confirmed that evidence of funding for projects is not admissible in condemnation proceedings.[266]

---

[261] City of Thornton v. Farmers Reservoir and Irrigation Co., 575 P.2d 382, 389 (Colo. 1978); *see also* Town of Telluride v. San Miguel Valley Corp., 185 P.3d 161 (Colo. 2008).

[262] City & Cnty. of Denver v. Bd. of Cty. Comm'rs of Arapahoe Cty., 156 P.2d 101 (Colo. 1945).

[263] Town of Glendale v. City & Cnty. of Denver, 322 P.2d 1053 (Colo. 1958).

[264] City of Thornton v. Farmers Reservoir and Irrigation Co., 575 P.2d 382 (Colo. 1978); City of Englewood v. Weist, 520 P.2d 120 (Colo. 1974); Toll v. City & Cnty. of Denver, 340 P.2d 862 (Colo. 1959). As a practical matter, home rule municipalities tend to follow the standard eminent domain procedures set forth in Article 1 of Title 38 of the C.R.S.

[265] City of Lafayette v. Town of Erie, 434 P.3d 746 (Colo. App. 2018), cert. denied (2019).

[266] Town of Silverthorne v. Lutz, 370 P.3d 388 (Colo. App. 2016).

APPENDIX A
CONSTITUTION OF THE STATE OF COLORADO ARTICLE XX: HOME RULE CITIES AND TOWNS

Section 1. Incorporated. The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The provisions of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Denver. Any contiguous town, city, or territory hereafter annexed to or consolidated with the city and county of Denver, under any such laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

(The preceding three paragraphs were amended by the People, November 5, 1974—Effective upon proclamation of the Governor, December 20, 1974.)

Any other provisions of this constitution to the contrary notwithstanding:

No annexation or consolidation proceeding shall be initiated after the effective date of this amendment pursuant to the general annexation and consolidation statutes of the state of Colorado to annex lands to or consolidate lands with the city and county of Denver until such proposed annexation or consolidation is first approved by a majority vote of a six-member boundary control commission composed of one commissioner from each of the boards of county commissioners of Adams,

Arapahoe, and Jefferson counties, respectively, and three elected officials of the city and county of Denver to be chosen by the mayor. The commissioners from each of the said counties shall be appointed by resolution of their respective boards.

No land located in any county other than Adams, Arapahoe, or Jefferson counties shall be annexed to or consolidated with the city and county of Denver unless such annexation or consolidation is approved by the unanimous vote of all the members of the board of county commissioners of the county in which such land is located.

Any territory attached to the city and county of Denver or the city of Lakewood or the city of Aurora during the period extending from April 1, 1974, to the effective date of this amendment, whether or not subject to judicial review, shall be detached therefrom on July 1, 1975, unless any such annexation is ratified by the boundary control commission on or before July 1, 1975.

Nothing in this amendment shall be construed as prohibiting the entry of any final judgment in any annexation judicial review proceeding pending on April 1, 1974, declaring any annexation by the city and county of Denver to be invalid.

The boundary control commission shall have the power at any time by four concurring votes to detach all or any portion of any territory validly annexed to the city and county of Denver during the period extending from March 1, 1973, to the effective date of this amendment.

All actions, including actions regarding procedural rules, shall be adopted by the commission by majority vote. Each commissioner shall have one vote, including the commissioner who acts as the chairman of the commission. All procedural rules adopted by the commission shall be filed with the secretary of state.

This amendment shall be self-executing.

(The preceding seven paragraphs were adopted November 5, 1974 Effective upon proclamation of the Governor, December 20, 1974. (See Laws 1974, p. 457.))

Section 2. Officers. The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but the charter shall designate the officers who shall, respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, or, in the case of officers not in the classified civil service, by ordinance within limits fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments; provided, however, no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

As amended November 7, 1950. (See Laws 1951, p. 232.)

Section 3. Transfer of government. Immediately upon the canvass of the vote showing the adoption of this amendment, it shall be the duty of the governor of the state to issue his proclamation accordingly, and thereupon the city of Denver, and all municipal corporations and that part of the county of Arapahoe within the boundaries of said city, shall merge into the city and county of Denver, and the terms of office of all officers of the city of Denver and of all included municipalities and of the county of Arapahoe shall terminate; except, that the then mayor, auditor, engineer, council (which shall perform the duties of a board of county commissioners), police magistrate, chief of police and boards, of the city of Denver shall become, respectively, said officers of the city and county of Denver, and said engineer shall be ex officio surveyor and said chief of police shall be ex officio sheriff of the city and county of Denver; and the then clerk and ex officio recorder, treasurer, assessor and coroner of the county of Arapahoe, and the justices of the peace and constables holding office within the city of Denver, shall become, respectively, said officers of the city and county of Denver, and the district attorney shall also be ex officio attorney of the city and county of Denver. The foregoing officers shall hold the said offices as above specified only until their successors are duly elected and qualified as herein provided for; except that the then district judges, county judge and district attorney shall serve their full terms, respectively, for which elected. The police and firemen of the city of Denver, except the chief of police as such, shall continue severally as the police and firemen of the city and county of Denver until they are severally discharged under such civil service regulations as shall be provided by the charter; and every charter shall provide that the department of fire and police and the department of public utilities and works shall be under such civil service regulations as in said charter shall be provided.

Added November 4, 1902. (See Laws 1901, p. 100.)

Section 4. First charter. (1) The charter and ordinances of the city of Denver as the same shall exist when this amendment takes effect, shall, for the time being only, and as far as applicable, be the charter and ordinances of the city and county of Denver; but the people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in the making, altering, revising or amending their charter and, within ten days after the proclamation of the governor announcing the adoption of this amendment the council of the city and county of Denver shall, by ordinance, call a special

election, to be conducted as provided by law, of the qualified electors in said city and county of Denver, for the election of twenty-one taxpayers who shall have been qualified electors within the limits thereof for at least five years, who shall constitute a charter convention to frame a charter for said city and county in harmony with this amendment. Immediately upon completion, the charter so framed, with a prefatory synopsis, shall be signed by the officers and members of the convention and delivered to the clerk of said city and county who shall publish the same in full, with his official certification, in the official newspaper of said city and county, three times, and a week apart, the first publication being with the call for a special election, at which the qualified electors of said city and county shall by vote express their approval or rejection of the said charter. If the said charter shall be approved by a majority of those voting thereon, then two copies thereof (together with the vote for and against) duly certified by the said clerk, shall, within ten days after such vote is taken, be filed with the secretary of state, and shall thereupon become and be the charter of the city and county of Denver. But if the said charter be rejected, then, within thirty days thereafter, twenty-one members of a new charter convention shall be elected at a special election to be called as above in said city and county, and they shall proceed as above to frame a charter, which shall in like manner and to the like end be published and submitted to a vote of said voters for their approval or rejection. If again rejected, the procedure herein designated shall be repeated (each special election for members of a new charter convention being within thirty days after each rejection) until a charter is finally approved by a majority of those voting thereon, and certified (together with the vote for and against) to the secretary of state as aforesaid, whereupon it shall become the charter of the said city and county of Denver and shall become the organic law thereof, and supersede any existing charters and amendments thereof. The members of each of said charter conventions shall be elected at large; and they shall complete their labors within sixty days after their respective election.

Every ordinance for a special election of charter convention members shall fix the time and place where the convention shall be held, and shall specify the compensation, if any, to be paid the officers and members thereof, allowing no compensation in case of nonattendance or tardy attendance, and shall fix the time when the vote shall be taken on the proposed charter, to be not less than thirty days nor more than sixty days after its delivery to the clerk. The charter shall make proper provision for continuing, amending or repealing the ordinances of the city and county of Denver.

All expenses of charter conventions shall be paid out of the treasury upon the order of the president and secretary thereof. The expenses of elections for charter conventions and of charter votes shall be paid out of the treasury upon the order of the council.

Any franchise relating to any street, alley, or public place of the said city and county shall be subject to the initiative and referendum powers reserved to the people under section 1 of article V of this constitution. Such referendum power shall be guaranteed notwithstanding a recital in an ordinance granting such franchise that such ordinance is necessary for the immediate preservation of the public peace, health, and safety. Not more than five percent of the registered electors of a home rule city shall be required to order such referendum. Nothing in this section shall preclude a home rule charter provision which requires a lesser number of registered electors to order such referendum or which requires a franchise to be voted on by the registered electors. If such a referendum is ordered to be submitted to the registered electors, the grantee of such franchise shall deposit with the treasurer the expense (to be determined by said treasurer) of such submission. The council shall have power to fix the rate of taxation on property each year for city and county purposes.

Added November 4, 1902. (See Laws 1901, p. 101.); as amended November 6, 1984 Effective upon proclamation of the Governor, January 14, 1985. (For the text of this amendment and the votes cast thereon, see L. 84, p. 1145, and L. 85, p. 1791.); as amended November 4, 1986 Effective upon proclamation of the Governor, December 17, 1986. (For the text of this amendment and the votes cast thereon, see L. 86, p. 1239, and L. 87, p. 1859.)

Section 5. New charters, amendments or measures. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided;

It shall be competent for qualified electors in number not less than five percent of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten percent of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; provided, that any question so submitted at a special election shall not again be submitted at a special election within two years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspa-

pers, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters.

As amended November 7, 1950. (See Laws 1951, p. 232.)

Section 6. Home rule for cities and towns. The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal elections, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;

b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;

c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes nonpartisan in character;

e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;

f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for mu-

nicipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and punishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the city and county of Denver. This article shall be in all respects self-executing.

As amended November 5, 1912. (See Laws 1913, p. 669.)

Section 7. City and county of Denver single school district consolidations. The city and county of Denver shall alone always constitute one school district, to be known as District No. 1, but its conduct, affairs and business shall be in the hands of a board of education consisting of such numbers, elected in such manner as the general school laws of the state shall provide, and until the first election under said laws of a full board of education which shall be had at the first election held after the adoption of this amendment, all the directors of school district No. 1, and the respective presidents of the school boards of school districts Nos. 2, 7, 17 and 21, at the time this amendment takes effect, shall act as such board of education, and all districts or special charters now existing are hereby abolished.

The said board of education shall perform all the acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said “District No. 1”.

Upon the annexation of any contiguous municipality which shall include a school district or districts or any part of a district, said school district or districts or part shall be merged in said “District No. 1”, which shall then own all the property thereof, real and personal, located within the boundaries of such annexed municipality, and shall assume and pay all the bonds, obligations and indebtedness of each of the said included school districts, and a proper proportion of those of partially included districts.

Provided, however, that the indebtedness, both principal and interest, which any school district may be under at the time when it becomes a part, by this amendment or by annexation, of said “District No. 1”, shall be paid by said school district so owing the same by a special tax to be fixed and certified by the board of education to the council which shall levy the same upon the property within the boundaries of such district, respectively, as the same existed at the time such district becomes a part of said “District No. 1”, and in case of partially included districts such tax shall be equitably apportioned upon the several parts thereof.

Added November 4, 1902. (See Laws 1901, p. 105.)

Section 8. Conflicting constitutional provisions declared inapplicable. Anything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for.

Added November 4, 1902. (See Laws 1901, p. 106.)

Section 9. Procedure and requirements for adoption. (1) Notwithstanding any provision in sections 4, 5, and 6 of this article to the contrary, the registered electors of each city and county, city, and town of the state are hereby vested with the power to adopt, amend, and repeal a home rule charter.

The general assembly shall provide by statute procedures under which the registered electors of any proposed or existing city and county, city, or town may adopt, amend, and repeal a municipal home rule charter. Action to initiate home rule shall be by petition, signed by not less than five percent of the registered electors of the proposed or existing city and county, city, or town, or by proper ordinance by the city council or board of trustees of a town, submitting the question of the adoption of a municipal home rule charter to the registered electors of the city and county, city, or town. No municipal home rule charter, amendment thereto, or repeal thereof, shall become effective until approved by a majority of the registered electors of such city and county, city, or town voting thereon. A new city or town may acquire home rule status at the time of its incorporation.

The provisions of this article as they existed prior to the effective date of this section, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute.

It is the purpose of this section to afford to the people of all cities, cities and counties, and towns the right to home rule regardless of population, period of incorporation, or other limitation, and for this purpose this section shall be self-executing. It is the further purpose of this section to facilitate adoption and amendment of home rule through such procedures as may hereafter be enacted by the general assembly.

Adopted November 3, 1970 Effective January 1, 1972. (See Laws 1969, p. 1250.); (1) and (2) amended November 6, 1984 Effective upon proclamation of the Governor, January 14, 1985. (For the text of this amendment and the votes cast thereon, see L. 84, p. 1146, and L. 85, p. 1791.)

APPENDIX B
CHRONOLOGY OF AMENDMENTS TO ARTICLE XX

The following chronology tracks the history of Article XX of the Colorado Constitution. Readers should note, however, that through the years there have been other amendments codified elsewhere in the constitution that have an indirect effect on home rule authority. For example, the Taxpayer Bill of Rights (TABOR) Amendment (1992), codified at Article X, Section 20, expressly supersedes any "conflicting state constitutional, state statutory, charter, or other state or local provisions." The Term Limit Amendment (1994), codified at Article XVIII, Section 11, expressly applies to all home rule municipalities. In more recent years, the Colorado Supreme Court has indicated that an initiated constitutional amendment that incidentally affects municipal home rule authority under Article XX may not pass muster under the "single subject rule" that has been in effect for all initiatives since 1994.[267]

1902 | ARTICLE XX: HOME RULE CITIES AND TOWNS

In 1898, the Denver city council called a convention to formulate recommendations to be presented to the state legislature providing a new charter for Denver. There was much discussion regarding a home rule amendment to the Colorado Constitution, but nothing was proposed at that time. Finally, in 1901, a home rule amendment was submitted to the people of Colorado and was ratified by the citizens at the 1902 general election by a margin of nearly 35,000 votes. This constitutional amendment, the original Article XX, consolidated the Denver city and county governments and the school districts, defined the boundaries, created a merit system for some employees, and empowered the voters of Denver and other cities to enact and amend the home rule charter.

1912 | SECTION 6: HOME RULE FOR CITIES AND TOWNS

In response to a series of court cases which effectively narrowed the powers of home rule municipalities, Section 6 was amended to clarify that home rule municipalities have supreme authority in areas of local and municipal concern. The original wording of section 6 provided merely that the people of a city have the power to propose charter conventions and amend such charter, with full power as to real and personal property and public utilities. The amendment to Section 6 expanded those powers, stating that a city's charter shall extend to all local and municipal matters and shall supersede any conflicting law. As a result of this amendment, a number of specific powers are now enumerated in Section 6. However, the amendment was careful to provide that such enumeration not be construed to deny home rule cities and towns any right or power essential to the full exercise of the right of self-government in both local and municipal matters.

[267] In re the Title, Ballot Title and Submission Clause and Summary for 1997-1998 #64, 960 P.2d 1192 (Colo. 1998); In re the Title, Ballot Title and Submission Clause and Summary for 1997-1998 #95, 960 P.2d 1204 (Colo. 1998).

1950 | SECTION 2: OFFICERS

The original Section 2 provided that city officer's salaries be fixed by the city charter and paid out of the city treasury. The 1950 amendment added that salaries of officers not in the classified Civil Service shall be fixed by ordinance within limits fixed by the charter, and that no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

1950 | SECTION 5: NEW CHARTERS, AMENDMENTS, OR MEASURES

Prior to 1950, Section 5 of Article 20 required that citizens of the city petition the council for a charter amendment for the adoption of a new charter or measure. This amendment added a new paragraph providing that the city council, on its own initiative may submit such a measure or amendment to the voters by ordinance or resolution.

1970 | SECTION 9: PROCEDURE AND REQUIREMENTS FOR ADOPTION

Prior to 1970, a newly-incorporated area in the state was prohibited from assuming home rule status until it was incorporated for at least five years. Municipalities with less than 2,000 population were also prevented from becoming home rule. In 1969, Article XX was amended by the addition of Section 9, to permit any municipality, regardless of population or period of incorporation, to acquire home rule status. The amendment also permitted the legislature to establish less cumbersome procedures facilitating the adoption of home rule.

1974 | SECTION 1: INCORPORATED

Two separate amendments were adopted in 1974, which dramatically limited the authority of Denver to annex territory. The Poundstone amendment, initiated by the people, deleted prior language that allowed Denver to annex like other municipalities. At the same time as the Poundstone amendment was adopted, the voters approved a legislatively referred measure that requires any change in Denver County boundaries to be approved by a six- member "Boundary Control Commission," including representatives of all the metro area counties.

1984 | SECTION 4: FIRST CHARTER

1984 | SECTION 9: PROCEDURE AND REQUIREMENTS FOR ADOPTION

In 1984, a number of sections in the constitution were amended to change the term "qualified elector" to "registered elector." While both qualified and registered electors meet the age and residency requirements for voting, only the latter has actually registered to vote. Revisions brought about by this amendment included several references in Sections 4 and 9 of Article XX. As a result of these changes, the power to adopt, amend or repeal a municipal home rule charter is vested in the registered, rather than qualified electors; the right of recall is exercised by registered, rather than qualified electors, and; a franchise relating to a street, alley, or public place in a home rule municipality is voted on by registered, rather than qualified electors.

1986 | SECTION 4: FIRST CHARTER

A 1986 amendment brought a number of changes to Section 4 of Article XX of the Colorado Constitution, concerning the granting of franchises by home rule municipalities. The amendment eliminated the requirement that a franchise granted by a home rule municipality be automatically submitted to a vote of the registered electors; provided that a franchise in a home rule municipality shall be subject to initiative and referendum; guaranteed the referendum right in a home rule municipality despite the inclusion of a provision in the franchise ordinance stating that the ordinance is necessary for the immediate preservation of the public peace, health and safety; provided that not more than 5 percent of the registered electors in a home rule municipality shall be required to order a referendum on a franchise; provided that a home rule charter may provide for a lesser percentage than five percent of the registered electors to order a referendum on a franchise, and allowed a home rule charter to continue to require that a franchise be automatically submitted to a vote of the registered electors.

1998 | SECTION 10: CITY AND COUNTY OF BROOMFIELD—CREATED

1998 | SECTION 11: OFFICERS—CITY AND COUNTY OF BROOMFIELD

1998 | SECTION 12: TRANSFER OF GOVERNMENT

1998 | SECTION 13: SECTION SELF-EXECUTING - APPROPRIATIONS

1998 | SECTIONS 10 THROUGH 13

These provide for the creation of the City and County of Broomfield effective November 15, 2001. These additions contain language substantially similar to sections 1, 2 and 3 relating to the consolidation of the City and County of Denver.

APPENDIX C
COLORADO REVISED STATUTES
TITLE 31 GOVERNMENT—MUNICIPAL

ARTICLE 2 FORMATION AND REORGANIZATION

§ 31-2-201. Short title. This part 2 shall be known and may be cited as the "Municipal Home Rule Act of 1971".

§ 31-2-202. Legislative declaration. The general assembly declares that the policies and procedures contained in this part 2 are enacted to implement section 9 of article XX of the state constitution, adopted at the 1970 general election, by providing statutory procedures to facilitate adoption and amendment of municipal home rule charters, and, to this end, this part 2 shall be liberally construed. The provisions of this part 2 shall supersede the requirements of article XX of the state constitution, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, as provided in section 9(3) of article XX of the state constitution.

§ 31-2-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Ballot title" means a ballot title as defined in section 31-11-103(1).

(2) "Publication" means one publication in one newspaper of general circulation within the municipality. If there is no such newspaper, publication shall be by posting in at least three public places within the municipality.

§ 31-2-204. Initiation of home rule.

(1) Proceedings to adopt a home rule charter for a municipality may be initiated:

(a) By the submission of a petition, signed by at least five percent of the registered electors of the municipality, to the governing body thereof; or

(b) By the adoption of an ordinance by the governing body of the municipality, without the prior submission of a petition therefor.

(2) Within thirty days after the initiation of the proceedings, in accordance with either paragraph (a) or (b) of subsection (1) of this section, the governing body of the municipality shall call an election for the purpose of forming a charter commission and of electing members thereof to frame a charter for the municipality, which election shall be held within one hundred twenty days after the date of the call of the election. The governing body shall cause notice of the election to be published not less than sixty days prior to the election.

(3) Candidates for the charter commission shall be nominated by filing with the clerk, on forms supplied by the clerk, a nomination petition signed by at least twenty-five registered electors and a statement by the candidate of consent to serve if elected. Said petition and statement shall be filed within thirty days after publication of the election notice. A second notice of the election, as soon as possible after the completion of filings, shall be published by the governing body and shall include the names of candidates for the charter commission.

§ 31-2-205. Election on formation of charter commission and designation of members.

(1) At the election voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

§ 31-2-206. Charter commission.

(1) The charter commission shall be comprised as follows:

(a) In municipalities having a population of less than two thousand, nine members; and

(b) In municipalities having a population of at least two thousand, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed twenty-one members.

(c) Deleted by Laws 1994, H.B.94-1286, § 89, eff. July 1, 1994.

(2) If the petition or ordinance initiating home rule proceedings pursuant to section 31-2-204(1) or initiating proceedings for forming a new charter commission pursuant to section 31-2-210(2) specifies that the members of the charter commission shall be elected by and from single- or multi-member districts or by a combination of such districts and at-large representation, the governing body, prior to publishing the notice provided for in section 31-2-204(2) or 31-2-210(4), shall divide the municipality into compact districts of approximately equal population. In such event the members of said charter commission shall be elected by and from districts, or partly by and from districts and partly at large, as specified in said petition or ordinance.

(3) Eligibility to serve on the charter commission shall extend to all registered electors of the municipality. Any vacancy on the charter commission shall be filled by appointment of the governing body.

(4) The charter commission shall meet at a time and date set by the governing body, which shall be not more than twenty days subsequent to the certification of the election, for the purpose of organizing itself. At such meeting, the commission members shall elect a chairman, a secretary, and such other officers as they deem necessary, all of which officers shall be members of the commission. The commission may adopt rules of procedure for its operations and proceedings. A majority of the commission members shall constitute a quorum for transacting business. Further meetings of the commission shall be held upon call of the chairman or a majority of the members. All meetings shall be open to the public.

(5) The commission may employ a staff; consult and retain experts; and purchase, lease, or otherwise provide for such supplies, materials, and equipment as it deems necessary. Upon completion of its work, the commission shall be dissolved, and all property of the commission shall become the property of the municipality.

(6) The governing body may accept funds, grants, gifts, and services for the commission from the state of Colorado, or the United States government, or any agencies or departments thereof, or from any other public or private source.

(7) Reasonable expenses of the charter commission shall be paid out of the general funds of the municipality, upon written verification made by the commission chairman and secretary, and the governing body shall adopt such supplemental appropriation ordinances as may be necessary to support such expenditures. Members of the commission shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The charter commission may conduct interviews and make investigations in the preparation of a charter, and, to the fullest extent practicable, municipal officials and employees shall cooperate with the commission by providing information, advice, and assistance.

(9) The charter commission shall hold at least one public hearing in preparation of a proposed charter.

(10) Within one hundred eighty days after its election, the charter commission shall submit to the governing body a proposed charter.

§ 31-2-207. Charter election—notice.

(1) Within thirty days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved, which election shall be held not less than sixty nor more than one hundred eighty-five days after publication of the notice thereof. Such notice of the election shall contain the full text of the proposed charter.

(1.5) The governing body shall set the ballot title for the proposed charter within sixty days after

the date that the proposed charter is submitted pursuant to subsection (1) of this section.

(2) If a majority of the registered electors voting thereon vote to adopt the proposed charter, the charter shall be deemed approved and it shall become effective at such time as the charter provides.

(3) If a majority of the registered electors voting thereon vote to reject the proposed charter, the charter commission shall proceed to prepare a revised proposed charter, utilizing the procedures set forth in section 31-2-206, and the governing body shall submit the revised proposed charter to an election in the manner set forth in subsection (1) of this section. If a majority of the registered electors voting on such revised proposed charter vote to adopt the revised proposed charter, it shall be deemed approved and it shall become effective at such time as the revised charter provides. If a majority of the registered voters voting thereon vote to reject the revised proposed charter, the charter commission shall forthwith be dissolved.

§ 31-2-208. Filings—effect.

(1) Within twenty days after its approval, a certified copy of the charter shall be filed with the secretary of state and with the clerk.

(2) Upon such filings all courts shall take judicial notice of the charter.

(3) This section shall also apply to any amendment or repeal of a charter.

§ 31-2-209. Special procedure for adopting a charter upon incorporation.

(1) Proceedings to adopt a home rule charter may be initiated at the time of incorporation.

(2) In order to initiate home rule at the time of incorporation, the petition for incorporation shall be in the form and meet the requirements required by the provisions of section 31-2-101, except that:

(a) The petition shall be signed by at least five percent of the registered electors of the territory to be embraced within the boundaries of the proposed municipality, notwithstanding any provision of section 31-2-101; and

(b) The petition for incorporation shall request the initiation of proceedings for the adoption of a home rule charter pursuant to the provisions of this part 2.

(3) The election commissioners appointed by the court pursuant to section 31-2-102 shall exercise, to the extent practicable, the powers, functions, and responsibilities otherwise assigned by this part 2 to the governing body or clerk, and the procedures for incorporation and adoption of a home rule charter shall be modified as necessary to effectuate concurrent consideration.

(4) At the incorporation election, conducted under the provisions of section 31-2-102, the registered electors shall vote upon:

(a) The question of incorporation, as set forth in section 31-2-102(5);

(b) The question of whether a charter commission should be formed, as set forth in section 31-2-205(1); and

(c) The election of charter commission members, as set forth in section 31-2-205(2).

(5) If a majority of the registered electors voting thereon vote for incorporation and for formation of a charter commission, the first election of officers shall be stayed pending drafting and approval of the charter pursuant to sections 31-2-206 and 31-2-207. Upon ratification of the charter or after rejection of a charter and revised charter pursuant to section 31-2-207, the election commissioners shall proceed to the first election of officers and to completion of incorporation pursuant to part 1 of this article.

(6) If a majority of the registered electors voting thereon vote for incorporation but against the formation of a charter commission, the procedures set forth in part 1 of this article shall be followed as if the petition for incorporation had not included a request for the adoption of home rule at the time of incorporation.

§ 31-2-210. Procedure to amend or repeal charter.

(1) Proceedings to amend a home rule charter may be initiated by either of the following methods:

(a) Filing of a petition meeting the following requirements, in the following manner:

(I) The petition process shall be commenced by filing with the clerk a statement of intent to circulate a peti-

tion, signed by at least five registered electors of the municipality. The petition shall be circulated for a period not to exceed ninety days from the date of filing of the statement of intent and shall be filed with the clerk before the close of business on the ninetieth day from said date of filing or on the next business day when said ninetieth day is a Saturday, Sunday, or legal holiday.

(II) The petition shall contain the text of the proposed amendment and shall state whether the proposed amendment is sought to be submitted at the next regular election or at a special election. If the amendment is sought to be submitted at a special election, the petition shall state an approximate date for such special election, subject to the provisions of subparagraph (IV) of this paragraph (a) and subsection (4) of this section.

(III) A petition to submit an amendment at the next regular election must be signed by at least five percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the date of said regular election.

(IV) A petition to submit an amendment at a special election must be signed by at least ten percent of the registered electors of the municipality registered on the date of filing the statement of intent and must be filed with the clerk at least ninety days prior to the approximate date of the special election stated in the petition.

(b) An ordinance adopted by the governing body submitting the proposed amendment to a vote of the registered electors of the municipality. Such ordinance shall also adopt a ballot title for the proposed amendment.

(2) Proceedings to repeal a home rule charter or to form a new charter commission may be initiated by either of the following methods:

(a) Filing of a petition in the manner prescribed by, and meeting the requirements of, paragraph (a) of subsection (1) of this section; except that:

(I) The petition shall state the proposal to repeal the charter or to form a new charter commission;

(II) The petition must be signed by at least fifteen percent of the registered electors of the municipality, regardless of whether the petition seeks submission of the proposal at a regular or special election; and

(III) If the proposal is for formation of a charter commission, the petition must be filed with the clerk at least ninety days prior to the date of the regular election or the approximate date stated in the petition for a special election, as the case may be.

(c) An ordinance adopted by a two-thirds vote of the governing body submitting the proposed repeal or formation of a charter commission to a vote of the registered electors of the municipality.

(3) The clerk shall, within fifteen working days after the filing of a petition pursuant to paragraph (a) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, certify to the governing body as to the validity and sufficiency of such petition. If the petition is sufficient, the governing body shall set a ballot title for the proposed amendment at its next meeting. If the petition is declared insufficient, such petition may be withdrawn by a majority of the persons representing the registered electors who signed such petition, may be amended or signed by additional registered electors of the municipality in accordance with paragraph (a) of subsection (1) of this section and paragraph (a) of subsection (2) of this section within fifteen days after such insufficiency is declared, and may be refiled as an original petition.

(3.5) If the subject matter of the petition is proposed for submission at a regular or special election that will be coordinated by the county clerk pursuant to section 1-7-116, C.R.S., and the municipal clerk has certified to the governing body that the petition is valid and sufficient, the clerk shall certify the proposed ballot question to the county clerk and recorder sixty days prior to the coordinated election as provided in section 1-5-203(3), C.R.S., unless the petition has by the sixtieth day been determined to be insufficient pursuant to section 31-2-223. Should the petition be found to be insufficient pursuant to section 31-2-223 following certification to the county clerk and recorder, the election on such question shall be deemed canceled, and any votes cast on the question shall not be counted.

(4) The governing body shall, within thirty days of the date of adoption of the ordinance or the date of filing of the petition (if the same is certified by the clerk to be valid and sufficient), publish notice of an election upon the amendment or proposal, which notice shall contain the full text of the amendment or statement of the proposal as contained in the ordinance or petition. The election shall be held not less than sixty nor more than one hundred twenty days after publication of such notice; except that, if the proposal is for formation of a charter commission, the election shall be held not less than sixty days after publication of such notice. If the amendment or proposal is initiated by petition and is sought to be submitted at a special election, the election shall be held as near as possible to the approximate date stated in the petition, but in any event shall be held within the time limits stated in this subsection (4).

(5) The procedure for the forming and functioning of a new charter commission shall comply as nearly as practicable with sections 31-2-204 to 31-2-207, relating to formation and functioning of an initial charter commission.

(6) If a majority of the registered electors voting thereon vote for a proposed amendment, the amendment shall be deemed approved. If a majority of the registered electors voting thereon vote for repeal of the charter, the charter shall be deemed repealed and the municipality shall proceed to organize and operate pursuant to the statutes applicable to a municipality of its size.

§ 31-2-211. Elections—general.

(1) Except as otherwise specifically provided, all elections held pursuant to this part 2 shall be conducted as nearly as practicable in conformity with the provisions of the "Colorado Municipal Election Code of 1965".1

(2) All necessary expenses for elections conducted pursuant to this part 2 for existing municipalities or for municipalities incorporated pursuant to part 1 of this article shall be paid out of the treasury of the municipality.

(3) A special election shall be called for any election held pursuant to this part 2 when a regular election is not scheduled within the time period provided for such election.

§ 31-2-212. Initiative, referendum, and recall. Every charter shall contain procedures for the initiative and referendum of measures and for the recall of officers.

§ 31-2-213. Determination of population. When a determination of the population or number of registered electors of the municipality is required under this part 2, said determination shall be made upon the best readily available information by the governing body, clerk, election commissioners, or court, as the case may be. Such determination shall be final in the absence of fraud or gross abuse of discretion.

§ 31-2-214. Time limit on submission of similar proposals. No proposal for a charter commission, charter amendment, or repeal of a charter shall be initiated within twelve months after rejection of a substantially similar proposal.

§ 31-2-215. Conflicting or alternative charter proposals.

(1) In submitting any charter or charter amendment, any alternative provision may be submitted for the choice of the voters and may be voted on separately without prejudice to others. The alternative provision receiving the highest number of votes, if approved by a majority of the registered electors voting thereon, shall be deemed approved.

(2) In case of adoption of conflicting provisions which are not submitted as alternatives, the one which receives the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

§ 31-2-216. Change in classification of municipalities. Notwithstanding the provisions of part 2 of article 1 of this title, a town having a population exceeding two thousand may reclassify itself as a city, and a city having a population of two thousand or less may reclassify itself as a town, upon adoption of a home rule charter without otherwise complying with the procedures in said part 2.

§ 31-2-217. Vested rights saved. The adoption of any charter, charter amendment, or repeal thereof shall not be construed to destroy any property right, contract right, or right of action of any nature or kind, civil or criminal, vested in or against the municipality under and by virtue of any provision of law theretofore existing or otherwise accruing to the municipality; but all such rights shall vest in and inure to the municipality or to any persons asserting any such claims against the municipality as fully and as completely as though the charter, amendment, or repeal thereof had not been adopted. Such adoption shall never be construed to affect any such right existing between the municipality and any person.

§ 31-2-218. Finality. No proceeding contesting the adoption of a charter, charter amendment, or repeal thereof shall be brought unless commenced within forty-five days after the election adopting the measure.

§ 31-2-219. Additional petition requirements. Any petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, shall be subject to the provisions of sections 31-2-

220 to 31-2-225, in addition to any other requirements imposed by this part 2. Any such petition which fails to conform to the requirements of this part 2 or is circulated in a manner other than that permitted in this part 2 is invalid.

§ 31-2-220. Warning on petition--signatures--affidavits—circulators.

(1) At the top of each page of a petition to initiate the adoption, amendment, or repeal of a municipal home rule charter, including the formation of a new charter commission, must be printed, in plain red letters no smaller than the impression of ten-point, bold-faced type, the following:

WARNING:

IT IS AGAINST THE LAW:

For anyone to sign any petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to sign such petition when not a registered elector.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR:

Do not sign this petition unless you have read or had read to you the text of the proposal in its entirety and understand its meaning.

(2) Any such petition shall be signed only by registered electors by their own signatures to which shall be attached the residence addresses of such persons, including street and number, if any, city or town, and the date of signing the same. To each such petition shall be attached an affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the said petition, that each signature thereon was affixed in the affiant's presence, that each signature thereon is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each of the persons signing said petition was at the time of signing a registered elector, and that the affiant has not paid or will not in the future pay and that the affiant believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to such petition. No petition shall be accepted for filing that does not have attached thereto the affidavit required by this section.

(3) Deleted by Laws 2000, Ch. 189, § 7, eff. Aug. 2, 2000.

(4) The clerk shall inspect timely filed petitions and attached affidavits to ensure compliance with subsection (2) of this section. Such inspection may consist of an examination of the information on the signature lines for patent defects, a comparison of the information on the signature lines with a list of registered electors provided by the county, or any other method of inspection reasonably expected to ensure compliance with subsection (2) of this section.

§ 31-2-221. Form of petition--representatives of signers.

(1) Petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall be printed on pages eight and one-half inches wide by eleven inches long, with a margin of two inches at the top for binding; the sheets for signature shall have their ruled lines numbered consecutively and shall be attached to a complete copy of what is proposed, printed in plain block letters no smaller than the impression of eight-point type. Petitions may consist of any number of sections composed of sheets arranged as provided in this section. Each petition shall designate by name and address not less than three nor more than five registered electors who shall represent the signers thereof in all matters affecting the same. No such petition shall be printed, published, or otherwise circulated in a municipality until the clerk has approved it as to form only, and the clerk shall assure that the petition contains only the matters required by this part 2 and contains no extraneous material. The clerk shall approve or disapprove such form within five working days of submission. All such petitions shall be prenumbered serially, and the circulation of any petition described by this part 2 by any medium other than personally by a circulator is prohibited.

(2) Any disassembly of the petition which has the effect of separating the affidavits from the signatures shall render the petition invalid and of no force and effect. Prior to the time of filing, the persons designated in the petition to represent

the signers shall attach the sheets containing the signatures and affidavits together, which shall be bound in convenient volumes together with the sheets containing the signatures accompanying the same.

§ 31-2-222. Ballot. Proposals to adopt, amend, or repeal home rule charters, including the formation of a new charter commission, shall appear upon the official ballot by ballot title only and, if more than one, shall be numbered consecutively in such order as the governing body may provide and shall be printed on the official ballot in that order, together with their respective numbers prefixed in boldface type. Each ballot title shall appear once on the official ballot and shall be separated from the other ballot titles next to it by heavy black lines and shall be followed by the words "yes" and "no" as follows:

(HERE SHALL APPEAR THE BALLOT TITLE IN FULL)

YES

NO

§ 31-2-223. Affidavit--evidence--protest procedure.

(1) All petitions to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, shall have attached thereto an affidavit of the circulator of the petition stating that each signature on the petition is the signature of the person whose name it purports to be and that to the best of the knowledge and belief of the affiant each of the persons signing such petition was at the time of signing a registered elector. A protest in writing, under oath, may be filed in the office in which such petition has been filed by some registered elector of the municipality or territory proposed to be incorporated within thirty days after such petition is filed, setting forth with particularity the grounds of such protest and the names protested. In such event the officer with whom such petition is filed shall mail a copy of the protest to the persons named in such petition as representing the signers thereof at the addresses therein given, together with a notice fixing a time for hearing the protest not less than five nor more than twenty days after such notice is mailed. If, at such hearing, such protest is denied in whole or in part, the person filing the same, within ten days after such denial, may file an amended protest, a copy of which shall be mailed to the persons named in the petition and on which a hearing shall be held as in the case of the original protest; but no person shall be entitled to amend an amended protest.

(2) All records and hearings shall be public, and all testimony shall be under oath. The officer with whom such petition is filed shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents. Upon failure of any witness to obey the subpoena, the officer may petition the district court, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of court shall be punishable as a contempt of court. Hearings shall be had as soon as is conveniently possible and must be concluded within thirty days after the commencement thereof, and the result of such hearings shall be certified to the persons representing the signers of such petition. In case the petition is declared insufficient in form or number of signatures of registered electors, it may be withdrawn by a majority in number of the persons representing the signers of such petition and, within fifteen days after the insufficiency is declared, may be amended or additional names signed thereto as in the first instance and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by the district court of the county in which such petition is filed, but any such review shall be timely made, and, upon application, the decision of such court thereon shall be reviewed by the supreme court.

§ 31-2-225. Unlawful acts—penalty.

(1) With respect to any petition to initiate the adoption, amendment, or repeal of a home rule charter, including the formation of a new charter commission, it is unlawful:

(a) For any person willfully and knowingly to circulate or cause to be circulated or sign or procure to be signed any petition bearing the name, device, or motto of any person, organization, association, league, or political party, or purporting in any way to be endorsed, approved, or submitted by any person, organization, association, league, or political party, without the written consent, approval, and authorization of such person, organization, association, league, or political party;

(b) For any person to sign any name other than his own to any such petition or knowingly to sign his name more than once for the same measure at one election;

(c) For any person to sign any such petition who is not a registered elector of the municipality or of the territory proposed to be incorporated at the time of signing the same;

(d) For any person to sign any affidavit as circulator without knowing or reasonably believing the statements made in such affidavit to be true;

(e) For any person to certify that an affidavit attached to such petition was subscribed or sworn to before him unless it was so subscribed and sworn to before him and unless such person so certifying is duly qualified under the laws of this state to administer an oath; or

(f) For any person to do willfully any act in reviewing the petition or setting the ballot title which shall confuse or tend to confuse the issues submitted or proposed to be submitted at any election held under this part 2 or to refuse to submit any such petition in the form presented for submission at any election held under this part 2.

(2) Any person who violates any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

APPENDIX D
HOME RULE MUNICIPALITIES IN COLORADO

Through the April 2022 elections, 104 of Colorado's 272 municipalities had adopted a home rule charter. These 104 municipalities represent approximately 93 percent of the municipal population of the state. Just over two-thirds of the state's entire population live within a home rule municipality.

Alamosa (City)	Council-Manager
Arvada (City)	Council-Manager
Aspen (City)	Council-Manager
Aurora (City)	Council-Manager
Avon (Town)	Council-Manager
Basalt (Town)	Council-Manager
Black Hawk(City)	Council-Manager
Boulder (City)	Council-Manager
Breckenridge (Town)	Council-Manager
Broomfield (City)	Council-Manager
Brighton (City)	Council-Manager
Burlington (City)	Mayor-Council
Canon City (City)	Council-Manager
Carbondale (Town)	Trustees-Manager
Castle Pines (City)	Council-Manager
Castle Rock (Town)	Council-Manager
Cedaredge (Town)	Council-Manager
Centennial (City)	Council-Manager
Central City (City)	Mayor-Alderman-Manager
Cherry Hills Village (City)	Council-Manager
Colorado Springs (City)	Mayor-Council
Commerce City (City)	Council-Manager
Cortez (City)	Council-Manager
Craig (City)	Council-Manager
Crested Butte (City)	Council-Manager
Dacono (City)	Mayor-Council
Delta (City)	Council-Manager
Denver (City)	Mayor-Council
Dillon (Town)	Council-Manager
Durango (City)	Council-Manager
Eagle (Town)	Council-Manager
Edgewater (City)	Mayor-Council-Manager
Englewood (City)	Council-Manager
Evans (City)	Council-Manager
Federal Heights (City)	Council-Manager
Fort Collins (City)	Council-Manager
Fort Morgan (City)	Mayor-Council
Fountain (City)	Council-Manager
Frisco (Town)	Council-Manager
Fruita (City)	Council-Manager
Glendale (City)	Council-Manager
Glenwood Springs (City)	Council-Manager

Golden (City)	Council-Manager
Grand Junction (City)	Council-Manager
Greeley (City)	Council-Manager
Greenwood Village (City)	Council-Manager
Gunnison (City)	Council-Manager
Gypsum (Town)	Mayor-Council
Hayden (Town)	Council-Manager
Holyoke (City)	Mayor-Council
Hudson (Town)	Council-Mayor-Manager
Johnstown (Town)	Council-Manager
Kiowa (Town)	Trustees-Manager
Lafayette (City)	Mayor-Council
La Junta (City)	Council-Manager
Lakewood (City)	Council-Manager
Lamar (City)	Mayor-Council
Larkspur (Town)	Mayor-Council
Littleton (City)	Council-Manager
Lone Tree (City)	Council-Manager
Longmont (City)	Council-Manager
Louisville (City)	Council-Manager
Loveland (City)	Council-Manager
Manitou Springs (City)	Mayor-Council
Minturn (Town)	Mayor-Council
Monte Vista (City)	Council-Manager
Montrose (City)	Council-Manager
Morrison (Town)	Trustees-Mayor
Mountain View (Town)	Mayor-Council
Mountain Village (Town)	Mayor-Council
Mt. Crested Butte (Town)	Council-Manager
New Castle (Town)	Mayor-Council
Northglenn (City)	Council-Manager
Ophir (Town)	General Assembly
Ouray (City)	Council-Manager
Pagosa Springs (Town)	Council-Manager
Parachute (Town)	Council-Manager
Parker (Town)	Council-Manager
Pueblo (City)	Mayor-Council
Rico (Town)	Trustees-Mayor
Ridgway (Town)	Council-Manager
Rifle (City)	Council-Manager
Sanford (Town)	Trustees-Mayor
Severance (Town)	Council-Manager
Sheridan (City)	Council-Manager
Silt (Town)	Trustees-Mayor
Silverthorne (Town)	Council-Manager
Silver Plume (Town)	Trustees-Mayor
Snowmass Village (Town)	Council-Mayor-Manager
Steamboat Springs (City)	Council-Manager
Sterling (City)	Council-Manager
Telluride (Town)	Council-Manager
Thornton (City)	Council-Manager
Timnath (Town)	Council-Manager
Trinidad (City)	Council-Manager
Vail (Town)	Council-Manager
Ward (Town)	General Assembly
Westminster (City)	Council-Manager
Wheat Ridge (City)	Council-Manager
Windsor (Town)	Council-Manager
Winter Park (City)	Council-Manager
Woodland Park (City)	Council-Manager
Wray (City)	Council-Manager
Yuma (City)	Council-Manager

APPENDIX E
TIME SCHEDULES

ADOPTING A HOME RULE CHARTER

WITHIN 30 DAYS AFTER INITIATION

Call an election on forming the charter commission and on commission members. C.R.S. § 31-2-204(2).

BEFORE PUBLISHING NOTICE OF THE ELECTION

Divide the municipality into compact districts of approximately equal population if so required by the initiating petition or ordinance. C.R.S. § 31-2-206(2).

AT LEAST 60 DAYS PRIOR TO THE ELECTION

Publish first notice of the election. C.R.S. § 31-2-204(2).

WITHIN 30 DAYS AFTER PUBLICATION OF THE FIRST ELECTION NOTICE

Nomination petitions and consent to serve statements must be filed with the municipal clerk. C.R.S. § 31-2-204(3).

AS SOON AS POSSIBLE AFTER THE FILING OF NOMINATION PETITIONS IS COMPLETED

Publish a second notice of election with names of nominated candidates. C.R.S. § 31-2-204(3).

WITHIN 120 DAYS AFTER PUBLICATION OF THE CALL FOR AN ELECTION

Election on charter commission and commission members to be held. C.R.S. § 31-2-204(2).

WITHIN 20 DAYS AFTER THE ELECTION

Governing body must call the first meeting of the charter commission to be held within said 20 days. C.R.S. § 31-2-206(4).

WHILE PREPARING THE CHARTER

Charter commission must hold one or more public hearings. C.R.S. § 31-2-206(9).

WITHIN 180 DAYS AFTER THE ELECTION

Charter commission must submit proposed charter to the governing body. C.R.S. § 31-2-206(10).

WITHIN 30 DAYS AFTER SUBMISSION OF THE PROPOSED CHARTER

Call an election on the charter and publish notice of the election including the text of the proposed charter. C.R.S. § 31-2-207(1).

NOT LESS THAN 60 NOR MORE THAN 185 DAYS AFTER PUBLICATION OF THE NOTICE OF ELECTION

Election on the charter must be held. C.R.S. § 31-2-207(1).

If the charter is defeated, the time limits for submitting and voting on a revised proposed charter are the same as for submitting and voting on the original proposed charter. C.R.S. § 31-2-207(3)

WITHIN 20 DAYS AFTER ELECTION APPROVING PROPOSED CHARTER OR REVISED PROPOSED CHARTER

File a certified copy of the adopted charter with the secretary of state and the municipal clerk. C.R.S. § 31-2-208(1).

WITHIN 45 DAYS AFTER THE ELECTION APPROVING THE PROPOSED CHARTER OR REVISED PROPOSED CHARTER

Proceedings to contest adopted charter must be commenced. C.R.S. § 31-2-218.

WITHIN 12 MONTHS AFTER REJECTION OF THE REVISED PROPOSED CHARTER

No substantially similar proposal shall be initiated. C.R.S. § 31-2-214.

AMENDING A HOME RULE CHARTER

WITHIN 30 DAYS AFTER INITIATION

Publish notice of and call an election on the amendment (notice must include the text of the amendment). C.R.S. § 31-2-210(4).

NOT LESS THAN 60 NOR MORE THAN 120 DAYS AFTER PUBLICATION OF THE NOTICE OF ELECTION

Hold an election on the amendment. C.R.S. § 31-2-210(4).

WITHIN 20 DAYS AFTER THE ELECTION APPROVING THE AMENDMENT

File a certified copy of the approved amendment with the secretary of state and the municipal clerk. C.R.S. § 31-2- 208(1) and (3).

WITHIN 45 DAYS AFTER THE ELECTION APPROVING THE AMENDMENT

Any proceedings to contest an adopted amendment must be commenced. C.R.S. § 31-2-218.

WITHIN 12 MONTHS AFTER THE ELECTION REJECTING THE AMENDMENT

No substantially similar amendment may be initiated. C.R.S. § 31-2-214.

REPEALING A HOME RULE CHARTER

WITHIN 30 DAYS AFTER INITIATION

Publish notice of and call an election on the repeal measure. C.R.S. § 31-2-210(4).

NOT LESS THAN 60 NOR MORE THAN 120 DAYS AFTER PUBLICATION OF THE NOTICE OF ELECTION

Election on repeal measure to be held. C.R.S. § 31-2-210(4).

AFTER APPROVAL OF REPEAL MEASURE

Municipality shall proceed to organize and operate as a statutory municipality of its size. C.R.S. § 31-2-210(6).

WITHIN 20 DAYS AFTER THE ELECTION APPROVING THE REPEAL

File certified copies of the approved repeal measure with the secretary of state and the municipal clerk. C.R.S. § 31-2-208(1) and (3).

WITHIN 45 DAYS AFTER THE ELECTION APPROVING THE REPEAL

Any proceedings to contest the approved repeal measure must be commenced. C.R.S. § 31-2-218.

WITHIN 12 MONTHS AFTER REJECTION OF THE REPEAL MEASURE

No substantially similar repeal measure may be proposed. C.R.S. § 31-2-214.

FORMING A NEW CHARTER COMMISSION

BEFORE PUBLISHING NOTICE OF ELECTION

Governing body must divide the municipality into districts of approximately equal population if required to do so by the initiating petition or ordinance. C.R.S. § 31-2-206(2).

WITHIN 30 DAYS AFTER INITIATION

Publish notice of and call an election on forming a new charter commission and on commission members. C.R.S. § 31-2-210(3)(4).

NOT LESS THAN 60 NOR MORE THAN 120 DAYS AFTER PUBLICATION OF THE NOTICE OF ELECTION

Election to be held on new charter commission and commission members. C.R.S. § 31-2-210(4).

Time schedules for the formation and functioning of a new charter commission and for the election on a new charter are the same as those time schedules used when adopting the original charter. C.R.S. § 31-2-210(5).

ADOPTING A HOME RULE CHARTER AT THE TIME OF INCORPORATION

Time requirements for incorporating and time requirements for adopting a home rule charter should be followed as closely as possible. Note the special provisions of C.R.S. § 31-2-209, summarized on page 42 of this publication.

APPENDIX F
SAMPLE ORDINANCE INITIATING THE ADOPTION OF A HOME RULE CHARTER

Material enclosed in brackets or parentheses is optional.

AN ORDINANCE INITIATING THE ADOPTION OF A HOME RULE CHARTER FOR CITY (TOWN) OF _____ AND PROVIDING FOR THE ELECTION OF CHARTER COMMISSION MEMBERS.

WHEREAS, the Municipal Home Rule Act of 1971, C. R. S. 1973, § 31-2-201 et seq., as amended, authorizes the City Council (Board of Trustees) to initiate, by ordinance, the adoption of a home rule charter; and

WHEREAS, the City Council (Board of Trustees) desires to initiate the adoption of a home rule charter for the City (Town) of _____ .

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL (BOARD OF TRUSTEES) OF THE CITY (TOWN) OF _____ ;

SECTION 1: INITIATION OF HOME RULE. That the following question be submitted to a vote of the registered electors of the City (Town) of _____ , in accordance with the provisions of Article XX of the Colorado Constitution and the Municipal Home Rule Act of 1971, at the general (a special) election to be held on the _____ day of _____ , 20 _____ ;

Shall the City (Town) of _____ form a home rule charter commission?

SECTION 2. COMMISSION MEMBERS. That at such election, the registered electors shall also elect a total of _____ members to the charter commission [, _____ members to be elected by and from each district to be created in accordance with the Municipal Home Rule Act prior to such election, (and _____ members to be elected at-large),] to take office if the formation of the charter commission is approved by the qualified electors.

(Add any other usual sections including effective date and standard signature and authentication provisions.)

APPENDIX G
SAMPLE PETITION INITIATING THE ADOPTING OF A HOME RULE CHARTER

The general form of a petition initiating the adoption of a home rule charter will be the same as a regular initiative petition. The following is a sample of the *substantive content* of a petition initiating the adoption of a home rule charter. (Material enclosed in brackets or parentheses is optional.)

PETITION

To: The City Council (Board of Trustees) of _____ , _____ County, State of Colorado.

We, the undersigned, in accordance with the provisions of Article XX of the Colorado Constitution, and the Municipal Home Rule Act of 1971, do respectfully submit to and demand the City Council (Board of Trustees) call an election of the registered electors of the City (Town) of _____ on the question of whether the City (Town) shall form a home rule charter commission and for the purpose of electing members of the charter commission if formed.

[We additionally submit to and demand the City Council (Board of Trustees), prior to the election on the charter commission and commission members, to divide the City (Town) into _____ districts of approximately equal populations, _____ members of the charter commission to be elected by and from each district (and _____ members to be elected at large).]

The ballot title and submission clause for the proposal petitioned for herein is as follows:

Shall the City (Town) of _____ form a home rule charter commission?

[The regular initiative petition then contains various clauses and pages for signatures of the electors, their addresses, and the date of signing the petition.]

APPENDIX H
SAMPLE ORGANIZATIONAL AND PROCEDURAL RULES FOR THE CHARTER COMMISSION

RULES ADOPTED BY THE CASTLE ROCK CHARTER COMMISSION

1. Officers

A. Officers and Tenure

The Officers of the Charter Commission shall be the Chairman, Vice-Chairman, Secretary and Treasurer. These officers, elected at the first meeting, will hold office for the entire time of the Commission until its adjournment sine die.

B. Duties of Officers

Chairman shall:

1. Preside at all meetings;
2. Appoint all committees not otherwise provided for;
3. Carry out assignments and instruction given to him by vote of the Commission;
4. Perform such other duties as customarily pertain to the office of Chairman.

Vice Chairman shall:

1. Be an aide to the Chairman;
2. In case of the absence of disability of the Chairman, pro tempore assume and perform the duties of the Chairman;

Perform as Chairman of the Calendar Committee.

Secretary shall:

1. Be responsible for the record of the proceedings of all meetings;
2. Be responsible for issuing notices of meetings and agenda.

Treasurer shall:

1. Perform as Chairman of the Finance & Personnel Committee.
2. Submit the Commission budget to City officials and secure from the City Council needed City funds to meet reasonable expenses of the Commission.

2. Meetings

A. Time and Place:

At least one regular meeting will be held each week, promptly at 7:00 p.m. on alternate Mondays and Wednesdays. The place of such meetings to be the Council Chambers of the City Hall, unless members are otherwise notified by the Secretary or someone designated by him.

B. Nature of Meetings:

1. Agenda as follows:

a. Call to Order

b. Roll Call

c. Approval of published Minutes of all meetings of the week previous to, and including Saturday last, at the first meeting of the week

d. Program as designated by Calendar Committee

e. Report of Committees

f. Unfinished business

g. New business

h. Adjournment

2. Programs of Meetings:

The Calendar Committee shall, upon request of the officers, or the members, make all arrangements for speakers, material, and/or equipment necessary for programs of the meetings. This Committee will, unless otherwise directed, provide in the Agenda the theme of each meeting, and will provide for such public hearings as may be found necessary.

3. Committees

Committees are appointed by the Chairman; committees to name their Chairmen. All Committees should be encour aged to submit all reports in writing and, where possible, delivered to the members individually prior to the meeting of its report.

a. Government & Elections

b. Administrative & Council Procedures

c. Legal & Judiciary

d. Budget & Finance

The Committees will be charged with the responsibility of drawing proposed Charter provisions as submitted and approved by a majority of the members. Every practical attempt should be made to accomplish such drafting on time for submission to the members under the same conditions as those for publication and approval of the Minutes of the preceding meetings.

e. Calendar Committee:

The Calendar Committee will consist of the Chairman, Vice-Chairman and the four committee Chairman. This Committee shall submit a tentative schedule of program subjects to be followed by the Commission. This schedule may be altered at any time by a majority vote of the members. Speakers, equipment and material necessary for the programs will be arranged for by the Committee. The Committee shall authorize all consultant services, subject to the approval of the Commission.

The Committee may, as part of the program, propose a subject for consideration by the Commission, but will not submit it to the Drafting Committee for refinement prior to bringing it before the members.

f. Finance and Personnel Committee:

The Finance and Personnel Committee will consist of the Chairman, Vice Chairman, Secretary and Treasurer.

This Committee shall submit the commission budget to proper City officials, securing from the City Council needed City funds to meet the reasonable expenses of the Commission, hiring or securing consultants, as authorized by the Calendar Committee, on either a full time or part-time basis and making arrangements either with the City or independently for necessary clerical and stenographic help.

g. Special Committees:

From time to time, special study and functioning committees may be appointed at the discretion of the Chairman or by majority vote of the members.

4. Quorum

For any meeting of the Commission, a quorum shall consist of eleven members. (Under the Municipal Home Rule Act, a quorum consists of a majority of the Commission members. § 31-2-206(4).)

5. Amendments

These rules may be suspended at any meeting for a specific purpose by majority vote of the members. The results of such suspension will extend beyond the time of that meeting. The rules may be amended by majority vote, provided they are proposed at one meeting and adopted by a majority vote at the next.

6. Parliamentary Authority and Rules of Voting

All questions not covered by these rules shall be decided by Roberts Rules of Order.

7. Submission of Committees' Drafts

The Chairmen of the respective committees shall submit the work of the four drafting committees to the Commission, section by section, one section at a time.

a. If no objection is voiced by any member of the Commission, such section of the Charter as was presented shall be deemed tentatively approved.

b. If an objection or objections to said section is announced, the same shall be discussed and voted upon in accordance with Robert's Rules of Order.

c. Once a section of the Charter has been tentatively approved, it shall not be brought up for further discussion until the entire Charter has been tentatively approved.

d. Once the entire Charter has been tentatively approved, section by section, it shall be reviewed, section by section, for additional amendments or final approval. Once a section has been approved on review, it shall not be considered again unless a majority vote of the members present so desire.

e. The Charter shall then be submitted, in toto, for approval by the entire Charter Commission

APPENDIX I
SUMMARY OF GENERAL ARGUMENTS FOR AND AGAINST HOME RULE

GENERAL ARGUMENTS FOR

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities, providing them greater flexibility when seeking solutions to local problems.
- These powers allow home rule municipalities to shape such solutions to fit local needs, without involving the state legislature or being subjected to undesirable limitations imposed statewide. Home rule allows municipalities to respond more quickly to changed circumstances or emergency situations by allowing legislative solutions at the local level through ordinances or charter amendments, rather than waiting for action by the state legislature.
- Home rule municipalities are not required to follow state statutes in matters of local and municipal concern and therefore enjoy freedom from state interference regarding local and municipal matters.
- The express and implied enabling authority granted to municipalities in state statutes is sometimes ambiguous; home rule allows the municipality to act with greater assurance that its actions are properly authorized, especially if the charter reserves to the municipality authority to legislate on any and all matters of local concern.
- By empowering local citizens more directly, home rule enhances citizen control, interest, involvement, and pride in their municipal government.
- Home rule is the embodiment of the principle that the best government is the one that is the closest to the people.

GENERAL ARGUMENTS AGAINST

- If a restrictive charter is adopted, the potential flexibility offered by home rule may be lost.
- Once adopted, the charter may serve as a vehicle for dissatisfied citizens to further limit the authority of the municipality in general and elected officials in particular through the adoption of binding charter amendment, i.e., amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people.
- The lack of definite limits on home rule powers may constitute a disadvantage to a municipality by creating legal uncertainty when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of "local concern" requires an ad hoc determination in court.
- The process of adopting a home rule charter involves some costs to the municipality. Attorneys' or other consultants' fees, expenses incurred from publication requirements, election costs, etc. can be a burden on the municipality.
- The prospect of an existing municipality adopting a home rule charter requires some change from the status quo along with the need to debate potentially volatile issues related to the structure and powers of the municipality, and therefore may be perceived as creating unnecessary risks in a community that is satisfied operating under existing statutes.
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage.

APPENDIX J
EXAMPLES OF ADDITIONAL AUTHORITY & FLEXIBILITY AFFORDED TO HOME RULE MUNICIPALITIES

ORGANIZATION & STRUCTURE

- Set forth legislative and administrative structure and authority.
- Set forth disqualifying circumstances for elected officials (some typical disqualifications include convictions for embezzlement of public funds, bribery, perjury, solicitation of bribery, subornation of perjury), as well as grounds and procedures for discipline or removal from office.
- Expand or contract the number and types of elected offices.
- Modify or clarify procedures for filling vacancies in elective offices that occur mid-term.
- Change the date when newly elected officials take office.
- Provide procedures for the appointment, tenure, and removal of municipal judges and clarify the causes for removal.
- Provide flexibility regarding the governing body being elected at-large, by districts, or by combination of at-large and by districts, the frequency of and procedures for redistricting, and number of councilmembers or trustees.
- Specify minimum age for elected officials.
- Provide additional flexibility and clarification regarding powers of mayor, council, manager, other officers and boards, and commissions.
- Provide clear authority for towns to adopt the council-manager form of government.
- Modify composition and powers of planning commission, board of adjustment, and other land use related offices. (Statutory municipalities already enjoy some flexibility per C. R. S. § 31-23-206(4) and § 31-23-307(1).)

ELECTIONS

- Establish regular election dates at times other than the dates required by statute (i.e., April of even-numbered years for towns, November of odd-numbered years for cities). (Not only does this provide local flexibility, but if the regular election date is other than November, it allows TABOR election issues to be voted on at times when other state and local issues are not on the ballot.)
- Provide additional flexibility for dates of special elections which are not TABOR related.
- Modify election requirements, including procedures for initiative, referendum, and recall. (Statutory municipalities also have some flexibility to alter procedures for initiative and referendum.)
- Expand the right to vote in municipal elections; for example, allow nonresidents to vote.
- Expand certain citizen powers, like initiative, referendum, and recall.

PROCEDURES

● Simplify or modify various publication requirements, including more streamlined procedures for adoption of codes by reference.

● Modify requirements for enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities (a single reading is all that is currently required for statutory towns).

● Resolve legal doubt or strengthen the argument that the municipality by charter or ordinance may delegate decisions to administrative staff.

● Clarify circumstances when ordinance/resolution/motion is required or permitted and allow additional actions by motion or resolution rather than by ordinance.

● Provide flexibility or clarification in terms of quorum and voting requirements for city councils and boards of trustees.

● Repeal or modify statutory provisions governing bidding and awarding of public projects and disposal of public property.

● Establish local zoning, subdivision, and other land use procedures which are different from those applicable to statutory municipalities.

● Clarify or narrow purposes for which executive sessions may be held.

● Provide a binding instrument through charter enactment or amendment to proscribe various powers and mandate procedures which will apply to and bind elected officials.

FINANCES

● Allow local collection and enforcement of sales taxes.

● Allow broader or narrower sales tax base (subject to voter approval if tax base is broadened).

● Allow broader use tax base (subject to voter approval) since the use tax for statutory cities and towns is limited to motor vehicles and construction materials.

● Establish differential sales tax rates applicable to certain transactions, such as for food or lodging.

● Authorize the combined state/county/municipal sales tax rate to exceed the 7% statutory limit (subject to voter approval of any increase).

● Allow additional types of excise taxes, such as admissions, tourism and lodgers taxes, measured on percentage of sales (subject to voter approval).

● Increase, eliminate, or modify statutory property tax limits (subject to TABOR limits).

● Prohibit one or more types of taxes that the community dislikes.

● Clarify, simplify, or otherwise revise procedures for budget and appropriation adoption, amendment, and transfer of funds.

● Authorize property and other tax refunds and exemptions not specifically authorized by state law.

● Clarify or broaden authority to create municipal enterprises.

● Broaden authority to impose and enforce municipal liens to facilitate collection of delinquent fees, taxes, and charges.

● Strengthen legal authority to impose development impact fees.

● Specify salaries of elected officials.

● Increase general obligation bond authority of municipalities (subject to voter approval).

● Facilitate formation of special improvement districts and expand purposes for which districts may be formed.

● Streamline requirements for issuance of bonds and other financial obligations.

MISCELLANEOUS POWERS

● Broaden eminent domain powers, including power to condemn property outside municipal boundaries.

● Establish alternative procedures for management and operation of municipal utilities, both within and without the municipality.

- Impose terms and conditions of municipal employment, including residency requirements.
- Establish voter approval requirements for utility franchises.
- Set forth mandatory maximum terms for franchises (such as 10 years) to avoid arguments concerning or negotiations over longer term franchises.
- Broaden jurisdiction of municipal courts (to permit, for example, increased nuisance abatement authority).
- Provide additional tools for economic development activities.
- Clarify authority for or expand the types of services which the municipality can provide, such as economic development and human services.
- Provide broader authority and flexibility with respect to civil service or other personnel systems, including collective bargaining, and regarding retirement and fringe benefit programs.
- Set forth additional or more specific ethics and conflict of interest provisions.
- Broaden land use regulatory authority.


CML
COLORADO
MUNICIPAL
LEAGUE

COLORADO
MUNICIPAL
LEAGUE

COMMITMENT

SERVICE

COLLABORATION