

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.