

Home Rule Summary

General Overview

“In Colorado, municipal “home rule”...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”.¹ Although adopting a home rule charter enables a municipality to have more power than a statutory municipality, “the powers of home rule municipalities may still be limited by their 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.”²

Through case law in disputes over home rule authority, the courts have created three classifications regarding whether a particular matter is one of “local and municipal” concern:

- A. Matters of local and municipal concern
- B. Matters of statewide concern
- C. Matters of mixed statewide and local concern

Procedures for Adopting a Home Rule Charter

Adopting a home rule Charter involves three primary steps:

1. 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
2. Conducting an election to elect the Charter Commission
3. Conducting an election to approve the proposed home rule Charter

For detailed list of the procedures, please see the “Tentative Home Rule Timeline” on page 4 of this summary.

Advantages and Disadvantages of Home Rule

CML’s *Home Rule Handbook* includes three pages (9-11) describing the advantages and disadvantages of Home Rule. Excerpting from the *Handbook*, some of the key advantages of Home Rule include the following:

¹ Colorado Municipal League, *Home Rule Handbook for Colorado’s Cities & Towns* (January 2017), 1, Hereafter abbreviated *HRH*. Note: staff has ordered copies of this Handbook for each member of the Board of Trustees.

² *HRH*, 6.

Finance and Taxation³

- Have available broader and more flexible taxing powers, including: the ability to collect, administer and enforce sales and use taxes; the ability 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; authority to levy taxes not available to statutory municipalities, such as lodging taxes, admissions taxes and other excise taxes; and the ability to provide property tax increase limits different from those provided for in the statutes, subject to voter approval.
- Within limits, establish a tax base that is not uniform with the State of Colorado tax base (numerous home rule municipalities have a broader tax base, with fewer tax exemptions). Examples include:
 - Business/consumer use tax (owed on the business purchase of assets, equipment and supplies where sales taxes have not been paid)
 - Pollution tax
 - Tax on manufacturers equipment
 - Computer software
 - Interstate telecommunications
 - Taxes due on the tangible personal property included in the purchase of an existing business within Erie.
 - Occupational privilege tax (employment head tax)
 - Maintenance services (copier or medical equipment maintenance service agreement where parts/equipment replacement could be taxed)
- Simplify or otherwise revise procedures for budget and appropriation adoption, amendment and transfer of funds.
- Establish maximum debt limitations.

³ Staff Comments on Impact of Home Rule on Tax-Related Activities:

Benefits and costs on tax-related activities of the Town resulting from going to home rule depends in part on how these activities are administered. Earlier collection of tax remittances would be an insignificant benefit. There is currently an approximate 15-day delay between the due date of the returns and remittance by the State to the Town. As a result, the investment earnings on this acceleration of receipts would not be significant, especially in light of the fact that the State charges the Town nothing for administering collection of the Town's sales tax.

The Town would need a significant retail sales tax base to justify establishing an in-house collection and audit function. The State currently performs these activities, including performing audits when requested (although how quickly a request for an audit might be honored is unknown). The State also performs periodic audits of major out-of-state vendors, from which the Town currently benefits. This is not to say that as a statutory town Erie does not need to do more to ensure that it is collecting amounts due, and this activity will grow as the Town in turn grows, but there is no need to rush to self-collection. (Note: The State could continue to collect sales tax on behalf of Erie should it change to home rule.)

- Establish limitations for the repayment of municipal bonds.

Land Use

- Have greater control over zoning issues, including restriction or elimination of nonconforming uses, permitting, sign codes and basic zone district regulations.
- Modify the composition and powers of the Planning Commission and Board of Adjustment.

Elections

- Establish procedures and dates for municipal elections differing from those established by state statute, including such matters as regular and special election dates and the dates when elected officials will take office.
- Establish procedures for initiative, referendum, and recall.
- Modify procedures for filling vacancies in elective offices.
- Specify the minimum age for elected officials.

Administration/Governance

- Determine the form of government and administrative structure, including the size of the governing body, the powers of elected and appointed officials, the terms of office of elected officials and whether they are elected from districts or at-large; quorums and voting requirements; the manner of filling vacancies; and the respective powers of elected and appointed officials, boards and commissions, and staff.
- Establish procedures for the adoption of ordinances and resolutions; determining whether actions need be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication or posting of ordinances; publishing ordinances by title only; and determination of the effective date of ordinances.
- Establish procedures pertaining to regular and special meetings and executive sessions.
- Determining the jurisdiction of municipal courts (e.g. increased nuisance abatement authority).
- Establish procedures for the sale or disposal of public property and the awarding of contracts.
- Determine the qualifications of municipal officers and employees.
- Establish maximum terms for franchises.

Disadvantages of Home Rule

- The possibility of a restrictive charter that could make Town business cumbersome
- Adopting a home rule charter can be costly and burdensome
- Some may see the ability of a home rule charter to provide more municipal authority over certain matters as a disadvantage

Tentative Home Rule Timeline

(For discussion purposes only, dates subject to change)

- Assumes use of April 7, 2020, regular Town election for election of Charter Commission members and use of November 3, 2020, general election for election on adoption of proposed Charter
- No special elections but only about 140 days are available for the Charter Commission's actual drafting work
- State law permits as many as 180 days (from date of Charter Commission election) for drafting
- Alternative election dates, including a special election, could allow more drafting time but would add election expense

December 9, 2019 – adoption of ordinance to initiate home rule process

- Initiating ordinance establishes the number of charter commission members
- 9 is the minimum; 21 is the maximum; must be an odd number
- Members can be at-large or from districts
- C.R.S. § 31-2-206(1)

January 7, 2020 – call an election

- Must be within 30 days after adoption of ordinance
- Election must be held within 120 days of call for election
- This date works as 91 days from April 7
- C.R.S. § 31-2-204(2)

February 5, 2020 - publish first notice of election not less than 60 days before election

- This date works as 62 days before the election
- This notice announces 1) the question of formation of a home rule charter commission on the April 7 ballot and 2) that the Town is accepting petitions from candidates who wish to serve on the charter commission
- This notice includes nomination petition deadline
- C.R.S. § 31-2-204(2)

March 7, 2020 – nomination and consent to serve statements are due to Town Clerk

- Town Clerk provides form of nomination petitions
- due to Clerk 30 days after publication of first notice of election

- 25 signatures required
- C.R.S. § 31-2-204(3)

March XX, 2020 – publish second notice of election with names of nominated candidates

- This date is somewhat flexible
- Must publish "as soon as possible" after nomination petitions are checked for sufficiency
- C.R.S. § 31-2-204(3))

April 7, 2020 – Regular Municipal Election

- First Tuesday in April, even-numbered years – C.R.S. § 31-1-102(10)(a)
- Electors decide 1) whether the Town shall form a home rule Charter Commission; and 2) elect commissioners to serve on the Charter Commission (if formation of home rule Charter Commission is approved)

April 17, 2020 – election results are certified

- Could be longer if April election is coordinated with the counties
- Will Town conduct its own regular municipal election or coordinate with the counties?

April 21, 2020 – Board of Trustees approve resolution to call first meeting of the Charter Commission

- This does not need to be done by separate BOT resolution; it could be included in the initiating ordinance
- Skipping this step may allow commission to hold first meet sooner

May 7, 2020, at the latest

- First meeting of Charter Commission (not more than 20 days after certification of election results - C.R.S. § 31-2-206(4))
- A first meeting date sooner after certification of election results could allow more drafting time
- After first meeting set by BOT, commission meets as needed at meetings set by the chair or a majority of the commission
- At first meeting commission elects its own officers (a chair, a secretary, and other officers as commission deems necessary)
- Commission may adopt rules of procedures for its operations and proceedings
- Majority is a quorum for conducting business; all meetings open to the public
- Must hold at least one public hearing in preparation of a proposed charter - C.R.S. § 31-2-206(9)

July – August, 2020

- Coordinate with counties to sign election IGAs; meet ballot content deadlines
- A review of 2019 coordinated election timelines will provide an idea of these deadlines (e.g., in 2019, the deadline for IGAs with counties to coordinate

elections is August 27; the deadline for certifying ballot content to the counties is Sept. 6)

- Charter Commission holds last meeting

August 25, 2020

- Charter Commission submits proposed charter to Board of Trustees within 180 days after election of commission - C.R.S. § 31-2-206(10)
- This could be later (October 4, 2020 is the 180th day deadline) but no regular BOT meeting date after August 25th will allow the Town to satisfy the timing requirements in C.R.S. § 31-2-207(1) if the November 3, 2020 general election is the desired election date
- BOT takes action (resolution) to submit proposed charter to voters at November 3, 2020, election, set ballot title, and order publication
- Note: some election decisions and notices will need to be made and given before this date for purposes of coordinating with the counties

September 4, 2020 (or sooner)

- Last possible date for the Town to publish full text of proposed charter and to give notice of election on November 3, 2020, to approve or reject charter
- This can be combined into one notice
- Election must be no less than 60 and no more than 185 days after publication of this notice
- C.R.S. § 31-2-207(1)
- **November 3 election is 60 days away**

November 3, 2020 – state general election

November 23, 2020

- file certified copy of adopted Charter with Secretary of State and Town Clerk (within 20 days of approval of proposed charter)
- This could also be interpreted as 20 days from the date of certification of election results, so it could be later
- C.R.S. § 31-2-208

<u>November 3, 2020 state general election</u> 185 days prior – May 2 nd 60 days prior – September 4 th	August 2020 regular BOT meetings: Aug. 11 th and 25 th September 2020 regular BOT meetings: Sept. 8 th and 22 nd
Consider preferred publication and deadlines for notices – how much lead time?	

Decisions for Board of Trustees to Consider Should the Home Rule Process be Initiated

- 1) Size of Charter Commission – The Commission can be composed of 9 to 21 members.
- 2) The calendar for initiating the home rule process – the draft home rule timeline outlines the initiation of the home rule process in April 2020 and an election on the proposed Charter in November 2020.

Estimated Costs of the Home Rule Process

Two elections will be needed: an election to elect the Charter Commission and an election to approve the proposed Charter. The lowest cost option is to elect the Charter Commission at the April 7, 2020 Regular Municipal Election and vote on the proposed Charter at the November 3, 2020 state general election and coordinate with both Boulder County and Weld County. The total cost for this approach would be approximately \$100,000 including:

- \$71,000 – 2020 Mail Ballot Election (voting system, judges, election supplies, etc.)
- \$30,000 – 2020 Coordinated Election (vote on proposed Charter)

If the Board wants to have an special election for either the election of the Charter Commission or if we cannot coordinate the second election to vote on the proposed Charter, that would be an additional cost:

- \$71,000 – 2020 Special Election Contingency (in case we cannot coordinate the second election to vote on the proposed Charter)