



Home Rule Issues

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Who is CIRSA and why are we interested in home rule?

- CIRSA is your property, liability, and WC self-insurance pool
 - We provide coverages, risk management services, and claims handling services to our member municipalities
 - Reducing number and severity of claims is in our members' interest and ours
- We have found that the level of certainty in our members' legal enactments can contribute greatly to liability (or lack thereof)
- A home rule charter is one of those enactments

Why is a charter a potential liability issue?

- At liability trainings, we stress for elected officials, appointed officials, and staff that being “within the scope” of your official duties is critical to maintaining your liability protections
- How can you know when you’re “outside the scope” if a charter isn’t clear about everyone’s responsibilities?
 - Clear lines of authority
 - No confusion in responsibilities
 - Accountability
 - Clear administrative structure, with delegation of administrative functions to staff, so the Board can focus on governance issues

Why is this a liability issue?

- How can you reduce involvement in administrative issues if you have a charter that promotes confusion on those issues?
 - Clear separation of powers – legislative-administrative-judicial
 - Clear chain of command
 - Every position reports to one supervisor, every department head reports to Manager/Administrator
 - Board works through Manager/Administrator in dealing with administrative issues

Why is this a liability issue?

- Remember, confusion runs both ways, and can be destructive either way:
 - Board reaching down and dealing with issues/personnel below the level of Manager/Administrator
 - Employees doing “end runs” around supervisors/department heads/Manager or Administrator
- Confused lines of authority are disempowering to everyone!
 - Elected officials can be diverted from “big picture” issues, goals, and priorities
 - Hard to measure performance if everyone’s fingers are in the mix
 - Can promote decision-shopping at all levels

Why is this liability issue?

- How can CIRSA help?
 - During initial consideration of home rule issues, attend, along with CML, one or more meetings set up by Town to educate citizens about home rule
 - If charter commission is established, attend one or more commission meetings to discuss further the liability issues involved in charter language
 - If charter is adopted, assist in periodic review of charter to address liability/best practices issues

What are some pros of home rule?

- Greater autonomy – the charter is analogous to being the Town’s “constitution” on “local and municipal” matters
 - This means “self-determination”! You can design how you want the Town to operate
 - You can decide whether to call yourself a city, town, etc.; remain a “Board of Trustees,” become a “Town Council,” “City Council,” etc.
- On “local and municipal” matters, with a well-drafted charter, the question of authority to do any given thing primarily revolves around “does the charter **prohibit** this, and if not, what is the process?”
 - In contrast, as a statutory town, the Town must search for and identify specific statutory authority to do any given thing
 - Home rule charters prevail over contrary state statutes on “local and municipal” matters

What are some pros of home rule?

- The statutes governing statutory municipalities, but especially statutory towns, are sketchy on detail and in some instances very outdated
- Greater autonomy on taxing issues: while TABOR contains certain restrictions on taxing matters that override home rule, statutory municipalities are prohibited from doing certain things that home rule municipalities can do
 - Examples: self-collection of sales tax and self-determination (subject to TABOR) of what are taxable and/or non-taxable transactions

What are some cons of home rule?

- If you end up with a “bad” charter, it may be worse than operating as a statutory town
 - Unduly restrictive
 - Vague, poorly written, and/or too much detail
 - Once something is in the charter, it may be extremely difficult to modify or remove
- Charter vulnerable to ballot box changes – special interests can insert provisions in charter that may not necessarily be desirable
 - The philosophy of Colorado’s one remaining “territorial charter” municipality – rather have the whole state legislature in control of our charter than a much smaller group

What are some cons of home rule?

- “If it ain’t broke, don’t fix it” – while the statutes governing statutory towns are not great, they have served the Town and many other statutory towns adequately
- Once you go home rule, you must maintain the charter
 - Review the charter every 5 years or so for revisions to recommend to the voters any needed updates/ revisions
 - And you may need to review and revise ordinances that reflect your “statutory town” past
- No autonomy on matters of “statewide” concern, and not much on “mixed state and local” concern (and of course, you can’t go outside the parameters of the state and federal constitutions)

So how would you describe a “good” charter?

- Sets clear lines of authority, reduces overlap, provides clarity in roles
- Establishes a logical administrative structure – think pyramid
 - “Go to” person - single point of contact between governing body and administration:
Manager/Administrator
 - Tried and true structure for modern municipal administration
 - Clear chain of command – employees and departments accountable to Manager/Administrator
 - Manager/Administrator accountable to governing body

A good charter...

- Understands that it is a “document of limitation”
 - Article XX grants home rule powers. The Charter contains what the citizens deem to be the essential limitations and restrictions on those powers
- Doesn't contain extraneous verbiage
 - Scrutinize every “may” – what is “may” doing in a document of limitation??
 - “Shall” . . . calls for exercise of powers in a certain fashion
 - “Shall not” . . . Withholds or restricts certain powers
 - Doesn't go “too deep” into process – leaves that for ordinances, etc.
- Of course, every rule has exceptions – and that includes the “document of limitation” concept

A good charter...

- Contains the essentials
 - Prefatory synopsis, initiative and referendum, recall provisions are some of the essentials
 - “City of Brevity” charter!
 - Concentrate on key limitations on power, key structure issues, and key procedures – leave out the details
- Is forward-looking
 - Don’t focus on today’s “hot button” issues to the exclusion of the future
 - Today’s hot button issues may be tomorrow’s old news
 - Charters are meant to be lasting documents – analogous to a constitution – don’t clutter it up with today’s details

Charter of the City of Brevity

PREFATORY SYNOPSIS

The people of the City of Brevity hereby adopt the following home rule charter.

ARTICLE I – POWERS

a. The City shall have all of the powers available to home rule municipalities under Article XX of the Colorado Constitution. The City shall also have all powers granted to cities, towns, and municipalities by the state statutes. All such powers shall be exercised by the City Council acting by ordinance, resolution, or motion.

b,. Except as otherwise provided by ordinance, the state statutes applicable to statutory towns shall continue to apply to the City.

ARTICLE II – INITIATIVE, REFERENDUM, AND RECALL

The registered electors of the City shall retain the powers of initiative, referendum, and recall as provided in Article V and Article XXI of the Colorado Constitution. Such powers shall be exercised in the manner provided in the state statutes applicable to a municipal initiative, referendum, or recall.

How will your charter stack up?

- What form of government do you now have, and what form do you intend to have?
 - You're currently organized as a statutory town
 - You have a Town Administrator, as the statutes permit
 - Statutes are not as clear as they could be on reporting relationships in a Town Administrator form
 - Statutes are a mess on "officers of the town" issues
 - Charter is opportunity to make those and other relationships clear

How will your charter stack up?

- There is no need to “reinvent the wheel” or to be “creative” when it comes to the structure of government – no points for “originality”
- Use a tried and true format
 - Council/Manager form is the “gold standard” of municipal government
- You can always add limitations or variants later if circumstances warrant – but they are difficult to remove if you have them in place from the start
 - Example: Extensive provisions on personnel issues. The charter is no place for such detail, but once in, you may be locked in for good

How will your charter stack up?

- What are the lines of authority – what is the chain of command?
- What is the administrative structure – where is the Administrator in the “pyramid”?
- Are there restrictions on “reaching down” by governing body or “end runs” by employees?
 - “Council not to interfere” language
- Is it clear what’s “governance” versus “administrative detail”?

What's the process?

See the timeline created by your Town Attorney:

- December, 2019: Ordinance to initiate home rule process
- How many on commission? At large or districts?
- January, 2020: Call election to initiate process, elect commission members
- April, 2020: At regular election, ballot question re initiating process and electing commission members
- May-August, 2020: if question passes, commission commences its work; must hold at least one public hearing in preparing charter
- August, 2020: Commission has 180 days from its election to submit a proposed charter to the Town Board (but note, other deadlines may impact that time frame)
- September, 2020: Board then gives notice of and holds an election to determine whether the proposed charter shall be adopted; full proposed charter must be published
- November, 2020: If the people reject the proposed charter at the election, the commission has another 180 days to submit a revised proposed charter

Process

- Gather a few concise, updated charters, pick **one** to use as your “starting point,” keep others on hand for different approaches to the topics
 - Your consultant will help you choose the “starting point” charter
 - Compare charters pound for pound! Longer is NOT better!!
 - Establish a list of topics by chapter, using your chosen charter’s chapters or articles, and make that the basis for meeting agendas – see example
 - Your consultant will help you identify all of the options, variations, different approaches for each of the topics – and you can help by referring to the other charters you have on hand.
 - Don’t keep revisiting “early” topics on list – “touch” each topic twice if you can (concepts and first draft, and then second draft)
 - After the two touches, PUT THE TOPIC ASIDE until you’ve gone through ALL the topics! Then you can revisit.
 - If you give in to the urge to revisit, your beginning chapters may be honed to perfection while you run out of time for the later chapters!

How to create a work schedule:

- First, take the topics from your “favored” charter:

ARTICLE 2. GENERAL PROVISIONS

ARTICLE 3. CITY COUNCIL

ARTICLE 4. COUNCIL PROCEDURE

ARTICLE 5. CODE OF ETHICS

ARTICLE 6. ELECTIONS

ARTICLE 7. INITIATIVE, REFERENDUM, AND
RECALL

ARTICLE 8. CITY MANAGER

ARTICLE 9. LEGAL AND JUDICIARY

ARTICLE 10. BOARDS AND COMMISSIONS

ARTICLE 11. FINANCE, BUDGET, AND AUDIT

ARTICLE 12. MUNICIPAL BORROWING AND
TAXATION

ARTICLE 13. CITY-OWNED UTILITIES

ARTICLE 14. FRANCHISES AND PERMITS

ARTICLE 15. MISCELLANEOUS PROVISIONS

ARTICLE 16. TRANSITIONAL PROVISIONS

PREFATORY SYNOPSIS



ARTICLE 1. DEFINITIONS

These may be at the
front of the charter, but
save discussion until
you go through the rest!

How to create a work schedule

- Then, assign each topic to a week in the following manner:

Week 1: Introduction of commission members, selection of legal consultant, review of budget, selection of assistant, discussion of bylaws

Week 2: Review of draft bylaws; adoption. Conceptual review of Article 2, General Provisions and Article 3, City Council (using chosen charter as starting point); discuss options, and then provide initial guidance to legal counsel for Erie's provisions.

Week 3: Review Erie Article 2 and 3 as drafted by counsel; discussion and initial approval. Conceptual review of Article 4, Council Procedure.

Week 4: Discussion and initial approval of Article 4; conceptual review of Article 5, Code of Ethics.

And so on!

How to create a work schedule

- Your legal counsel can help you determine when 2 topics can be tackled in the same week, and when a topic might be complicated enough that more than 2 meetings are needed.
- But try to observe the “2 touch” rule until you make it all the way through the topics!
- You should plan to meet ONCE A WEEK!
- You may want to build in a public comment period at the beginning of each meeting.
- You should build in at least 2 formal public hearings – one at midway, one towards completion.
- And you should build in at least one opportunity for staff comment, especially if you’re making lots of changes that affect staff.
- You will want a recording secretary to keep minutes. Minutes should be “action minutes” – recording the actions taken – motions, votes.

How to create a work schedule

So a sample week 3 agenda might look like this:

1. Call to order and roll call.
2. Introduction of guests (if any).
3. Public comment period.
4. New business: Conceptual review and review of “starting point” charter language on Article 4, Code of Ethics; discussion of options and initial guidance to legal counsel.
5. Old business: Review of draft language for Articles 2 and 3; discussion and initial approval.
6. Other business as raised by commission members.
7. Adjournment.

Process

- The assistance of a legal expert is essential
 - Charter drafting is highly technical work
 - Don't attempt to “save” money by not having legal advisor attend every meeting
 - You'll spend more in the long run
 - Can be your Town Attorney or a consultant with expertise – for you to decide which is best – but can be workable either way
 - Outside consultant can sometimes help with getting away from the concerns of the moment and viewing issues from broader, long-term perspective

Process

- Don't focus on wordsmithing – achieve consensus in principle, leave drafting to consultant
- Have a public comment period at the beginning of each meeting as well as **at least two** formal public hearings
- Also, give Town staff at least one opportunity to provide thoughts, especially if the proposed charter will contain provisions that dramatically alter what staff does/how they do it
- After you go through all the topics, the commission will have the opportunity to approve the entire charter
 - PLEASE try not to “relitigate” settled issues!
 - PLEASE try to get behind the proposed charter unanimously if you can! A divided commission may doom a charter to failure at the ballot box.

Process

- Will need to publish entire text of charter
- Consider doing it in the form of a “supplement” in the paper rather than in the classified ads
 - More readable, may be less expensive, can have extra copies printed for distribution

What are some FAQs?

- Should members of the Board of Trustees run to be on the commission?
- Should we have 9 members, 21 members, or some number in between?
- Should we have members at large or by district?
- If commission members don't agree on a specific charter provision, should they submit "alternative" language?
- Does the Board have the ability to change the proposed charter before it is submitted to the voters?
- Is there a "good time" or "bad time" to be looking at home rule?

FAQs

- Should all departments report up through the Manager/Administrator, or should some departments report directly to the governing body?
- While we're at this home rule business, should we just abolish the Manager/Administrator position, and go to a "strong mayor" format?
- Why are you suggesting that we only pick ONE existing charter as a "starting point" for our own? Shouldn't we be comparing 3, 5, 10, or ALL charters, and "picking and choosing" our favored language?
- Others? What questions do you have?

Conclusion

- Considering home rule is an exciting time for the community
- Citizens have the opportunity to look far into the future and envision what they want their government to look like/how it functions
- But make sure that the time is right to consider home rule – if the community is in a divisive or contentious period, or just coming off of a period of controversy, those issues can loom too large in the rear-view mirror
- Think long-range! The charter you write is the charter you'll live with for many, many decades – don't focus too much on today's “hot button” issues

About the Speaker

Tami A. Tanoue

- CIRSA Executive Director; previously in-house General Counsel/Deputy Executive Director and Claims Manager for CIRSA
- Previously in private practice with the firm of Griffiths, Tanoue, Light, Harrington & Dawes, serving CIRSA as its contract General Counsel for 12 years, and serving as City or Town Attorney for several Colorado municipalities.
- Previously Staff Attorney for the Colorado Municipal League, representing the collective interests of Colorado municipalities.
- Regular speaker on local government liability topics; author of several publications on liability issues.

Note: The information in this presentation is provided solely as a training resource, and is not a substitute for obtaining the advice of your own legal counsel on any legal question. Any opinions expressed are solely the author's.



About CIRSA

- Colorado Intergovernmental Risk Sharing Agency
- Public entity self-insurance pool for property, liability, and workers' compensation coverages
 - Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations
 - Not an insurance company, but an entity created by intergovernmental agreement of our members
- Of the incorporated municipalities in Colorado:
 - 84% are members of our PC pool
 - 46% are members of our WC pool