

THE NATURE AND PURPOSE OF A HOME RULE CHARTER

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Preface

The original paper, "The Nature and Purpose of a Home Rule Charter," was prepared in 1971 by David Morris, Attorney, Kalamazoo, Michigan who is now deceased. This paper has been updated and revised by William L. Steude, General Counsel, Michigan Municipal League, and by Daniel C. Matson, City Attorney, DeWitt, Michigan and President of the Michigan Association of Municipal Attorneys. A four-page staff summary of this paper (Report No. 310-03) was released in July 1993 by the Citizens Research Council as part of the Detroit City Charter Revision series.

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THE NATURE AND PURPOSE OF A HOME RULE CHARTER

Introduction

It is usually a novel experience for everyone when a new elected charter commission first convenes to prepare a charter for a home rule city. Elected at-large from a nonpartisan ballot, many have had no experience at all with the conduct of city government, while others may have touched limited aspects of city functions.

The challenge interests a broad cross-section of the entire citizenry, especially the news media, chambers of commerce, labor unions, women's groups, and students. Their ideas and attitudes influence the drafting process as well as the final vote adopting or rejecting the charter.

It's a large order: framing a charter designed to provide the mechanism for accomplishing the myriad tasks assigned to city officials to govern the community; deciding what governmental structure will exercise those powers; and, determining how the mechanism can be kept both responsible and responsive to the citizens it is to serve. Home rule gives the citizenry the right to form its own city government, and the opportunity to innovate and invent in a search for the best. The citizenry frames its own local government.

Comprehending in depth the assigned duties of cities staggers the mind. There are the vital functions of the clerk and election officials, the treasurer, assessor, accountant, auditor, purchasing agent and personnel director. Cities are expected to serve the needs of their citizens in many diverse but traditional ways: fire protection, police services, environmental protection, street and sidewalk construction and maintenance, storm water drainage and clean ups sewage collection and treatment, water supply, parks, recreation facilities and programs, cemeteries, street lighting, bus and subway transportation, airports, distribution of electricity and gas, bridges and tunnels, freeways. You name it.

Cities are expected to provide increasingly effective social and regulatory services, frequently touching the lives of many of its individual citizens: zoning, planning, law enforcement, non-discrimination against minorities, housing, health and welfare, traffic engineering, emergency preparedness, housing and building codes, waste disposal and incineration, to start the list.

The city is being pressed into leadership in solving a broad spectrum of social problems, such as serving the needs of the under-privileged of all ages, races and conditions, fostering job opportunities, combating drug abuse, accommodating protest groups of every type, assuring fair housing and nondiscrimination practices, solving complex pollution and environmental problems, and so on almost endlessly.

And, as emphasized by the writers of the Model City Charter, another problem of overriding importance is how the city fits into the general framework of government: "Few if any functions of government today are the absolute preserve of a city. Aspects of virtually all functions are distributed among all levels of government and frequently among several local units . . . Charter commissions must look beyond the legal and geographical jurisdiction of the municipality. The

effectiveness of local political leadership may well be judged ultimately by its capacity to mesh municipal programs with those of other jurisdictions.”¹

It’s a large order: to formulate this mechanism, and an ever larger one to participate in its execution once it’s adopted. The charter commissioners will have to determine which of the available municipal powers will be given to their officials, what structure and form will best cope with the traditional, as well as the new and future needs of the community, provide a workable relationship with other governments, and especially respond to the wishes and encourage the involvement of all the citizens. As it writes, the commission will want to promote citizen understanding of the objectives in anticipation of their duty to ratify or reject the finished document by their votes.

History

The word “charter” has a long history, including the Great Charter, or Magna Carta, of 1215, through the charters given the English colonies in America and the trading companies. It would serve no useful purpose for the present paper to examine this interesting history.

Suffice it to say that a city charter is a basic law formulating the government for a city that, within the limitations of the state constitution and legislative enactments, establishes the framework of government, defines powers and duties, and identifies the rights and responsibilities of a city in fulfilling the needs of its citizens.

During the nineteenth century city charters took the form of general or special acts dictated from a distant legislature. These charters fixed the forms of city government and granted only such powers to local bodies as were expressly enumerated therein or necessarily implied. This is sometimes known as “Judge Dillon’s rule” and contemplated that the city was a mere political subdivision of the state and, regardless of the city’s needs, it could exercise only such powers as were expressly granted.

At the start of the twentieth century great economic changes were bringing even greater social changes. Together these placed new and heavy burdens on the cities. Large numbers of the rural population moved into the cities at the very time great waves of immigrants arrived. Cities experienced great growth and a great need for many new services, but with populations still inexperienced in complex governmental forms. As the industrial-economic-social revolution roared on, it is no wonder that governmental conditions in cities became chaotic. Bossism, patronage, spoils, the ward heelers--they all appeared to be commonplace, necessary evils. Even graft was common, and largely unchecked. “You can’t beat city hall” was more than a cute saying. It was a brutal fact.

¹ Model City Charter, Seventh Edition, 1989, page xxv, Copyrighted, 1989, National Municipal League, New York. Used with permission.

Home Rule

Thus was the stage set for municipal reform and the concept of “home rule” for cities came to flower. It was reasoned that the vices of the past might be corrected or reduced if the local populace could frame its own charter, determine how best to secure representation on the city council, provide its own means for selecting the mayor and the administrators of the city activities, define the powers that might be exercised, adopt nonpartisan at-large elections if it wished, and establish its own accounting and auditing controls. There would be no harm in trying.

Reform groups took up the fight. All about them they saw the industrial revolution going on apace. With all its faults, it was getting the job done it was assigned to do: produce the goods, make the profit. Its major tool was the corporation, with its widespread stockholders, its board of directors, its efficient and imaginative president, and its talented staff and organization. No two corporations were exactly alike. Their boards differed in number and composition, as well as frequency of meetings. Some had only one place of business, others had many. Some were large, some small. Some had many officers, others but few. The corporation was a flexible tool for accomplishing an endless variety of complex objectives.

Perhaps it might also do the job for cities and other local governments. You would start with a charters like a set of by-laws, tailored to local desires and needs. The council could be like a board of directors: policymakers, legislators. The mayor or manager could be like a president: a professional administrator. All sorts of checks and balances could be introduced. Management would be somewhat removed from the politics of ownership, but it would have to be responsive--through direction of a board.

The principle of municipal home rule was apparently first enumerated in the constitution of Missouri in 1875. It quickly spread to other states.

The Michigan Constitution of 1908 included the following language:

Article VIII. Section 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.

This provision was hailed as a major accomplishment by establishing “home rule” for cities and villages in Michigan. In the “Address to the People,” prepared by the Constitutional Convention of 1907, the following appears:

The purpose is to invest the legislature with power to enact into law such broad general principles relative to organization and administration as are or may be common to all cities and all villages, each city being left to frame, adopt and amend those charter provisions which have reference to their local concerns. The most prominent reasons offered for this change are that each municipality is the best judge of its local needs and the best .able to provide for its local necessities;

that inasmuch as special charters and their amendments are now of local origin, the state legislature will become much more efficient and its terms much shorter if the labor of passing upon the great mass of detail incident to municipal affairs is taken from that body and given into the hands of the people primarily interested.

After approval of the constitution by the voters, the legislature adopted Act 279 of 1909, the well-known Home Rule Cities Act (along with one for villages), to enable the citizens of Michigan cities to frame, adopt, and amend their own charters within the extensive ground rules established by that act. It later added a declaration approving the essence of home rule:

Each city may in its charter provide for the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants, and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state. MCL, #117.4j, MSA 5.2083(3).

The courts appeared to drop the Dillon rule which held a city to be a political subdivision with restricted enumerated powers. Early cases declared that since the purpose of the home rule act was to give cities a large measure of home rules it should be construed liberally, and in the home rule spirit.

In one case, the Supreme Court of Michigan declared that a city with a home rule charter might enact and put into its charter any provision limited to purely municipal government, which it might deem proper, so long as such provision did not run contrary to the constitution or any general statute. In 1912 the Michigan Supreme Court declared:

The framers of the constitution (of 1908), in departing from the old order of things and providing for what is popularly known as ‘home rule’ or ‘freeholder’s charters’, thereby granting autonomy to municipalities, did not deem it wise to make the constitutional provision on the subject self-executing, but required a preliminary, general law to be passed, outlining and defining the course to be followed, within certain limits, delineating the sphere of municipal action in comprehensive terms. The new system is one of general grant of rights and powers, subject only to certain enumerated restrictions, instead of the former method of only granting enumerated rights and powers definitely specified. We must assume the act was passed with that intent and construe it accordingly. (**Gallup v Saginaw**, 170 Mich 195, 199)

The court noted that the constitution granted authority to cities to pass all laws relating to its municipal concerns. The legislature was mandated to “abdicate its unlimited power to interfere in strictly local affairs” and to prescribe a sphere of municipal action, in local legislation and management, into which it should not intrude.

The Michigan Constitution of 1963 adopted much of the home rule provision of the 1908 constitution verbatim and then added the following language: “No enumeration of powers granted to

cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.” It then added frosting to the cake for home rule advocates with this language: “The provisions of this constitution and laws concerning counties, townships, cities and villages shall be liberally construed in their favor.”

Erosion of the Home Rule Principle

A word of caution must be inserted at this point. There have been unfortunate reversions to the limitations of Dillon’s rule through the years. There have been occasional references in court decisions to “mere political subdivisions” with only such powers as the state has granted. The greatest erosion to the home rule concept, however, has come from the legislature. Over the years the legislature has superimposed state requirements over such subjects as governing public meetings, public access to public records, conflicts of interest by public officials, political rights of public employees, mandatory collective bargaining and compulsory arbitration of police and fire labor disputes, and thereby has entirely or substantially preempted local home rule authority in those areas. In other areas, such as the power to borrow money, conduct elections and maintain roads, local authority has been subjected to rigid state standards.

Every year the erosion grows as bills are introduced which would diminish home rule discretion by prohibiting what a city might otherwise opt to permit, or by permitting what a city might otherwise wish to prohibit. Examples are the local regulation of firearms, the regulation of home occupations, the location of child day care facilities, adult foster care and group homes, the regulation of mobile home parks and mobile homes, the prohibition of local residency restrictions on police, fire, and other public employees.

Major state restrictions on local taxing and spending power have been legislated or imposed by the statewide electorate: uniform budgeting, accounting, auditing requirements and procedures, exemptions from, and limitations on the property tax, and suspension of the broad home rule excise taxing power.

The home rule concept has to be jealously guarded, exercised, and nurtured with devotion if it is to remain healthy and meaningful.

Home rule cities themselves have been partly responsible for this erosion of home rule principles. When in doubt about a given power, like “boulevard lighting,” they have run to the legislature for an amendment spelling it out, thus dodging possible litigation. The incorporation and annexation provisions have been amended so often as to render them confusing and complex. Many other statutes are expressly limited to “cities over one million population,” solely to grant some power to Detroit, and thus infer that it is not extended to others. Many of these laws also supersede charter provisions, thus avoiding the necessity of selling a local charter amendment to the local electorate.

Home rule depends upon legislative and local restraint and municipal resistance to the power of the legislature to delimit home rule by general law.

Unfunded state and federal mandates have become major forces eroding home rule. These are statutes and administrative regulations that impose unreimbursed costs upon local budgets to comply with judicially enforceable deadlines, standards, and expenditures. Mandates account for

major cost increases in personnel and public services like water, sewer, and solid waste disposal arising from federal and state environmental laws, regulations, and orders. Cities might be able to cope with any single mandate one at a time. But their cumulative cost is preempting and diminishing resources, distorting local spending priorities, and having a significant impact upon local government energy, time, morale, and on the local property tax base.

Home Rule Act Reviewed

Essentially, home rule is the right of the people of the city to set up and change their own governmental structure. This is done through a written charter framed by an elected charter commission and adopted by the people by referendum. The home rule act fixes the procedures and establishes the ground rules within which charters are developed. The oft-amended act then proceeds to establish long lists of mandatory, permissive, and prohibited powers and functions.

The act makes it mandatory that each city be a body corporate, have a legislative body, a mayor and a clerk, treasurer, assessor, and board of review. The legislative body may be elected at-large, by ward, or a combination of the two. The mayor may be selected by the people or by the legislative body. Other officials of the city may be elected or be appointed by the mayor, manager, or council as provided in the charter. Elections may be partisan or nonpartisan and nominations may be provided, by primary election, petition or convention. The charter shall spell out the qualifications, duties and compensation of the officers of the city. A tax limitation as high as \$20 per thousand of state equalized valuation (20 mills) may be provided. Provisions must be made for the taxing procedure and for the protection of the public peace, health and safety of persons and properties. Ordinance adoption procedure must be established. All sessions of the legislative body and all records of the municipality are subject to public meeting and public records requirements. A journal shall be kept in the English language and a uniform system of accounts must be established.

The permissive charter provisions are quite extensive. They include the power to borrow money; provide for streets, sewers and water works, lighting, and utilities; assessing the cost of public improvements; public buildings; condemnation; and many other municipal activities such as zoning; regulation of trades, gas stations and billboards; initiative, referendum, and recall; civil service; rapid transit systems; city departments, and municipal powers.

The prohibited powers are then discussed in the home rule act. No city may exceed the tax limits established by law or the charter call more than two special elections a year, sell certain land or issue certain bonds except by a vote of the people, or repudiate any of its debts. There are also other limitations.

Complex and “abstruse” provisions establish the ground rules of incorporating, consolidating, and annexing by cities, detaching therefrom or vacating an incorporation. The State Boundary Commission, under other legislation, governs new incorporations, annexations, and consolidations.

Other sections of the home rule act relate to the activities of a charter commission and the adoption or amendment of the charter, initiative petitions, reapportionment, the powers of police officers, and the acquisition of property.

The Nature of a Home Rule Charter

As we have seen, the city charter, adopted by the people themselves, constitutes the fundamental law for the city until amended or replaced. It must cover all of the mandatory requirements with express provisions. It should cover the permissive powers desired either expressly or by necessary inference. It should be written with clarity and precision. Nothing is more frustrating than to find, several years after a charter has been adopted, that it contains inconsistent provisions, unworkable procedures, or fuzzy language.

Particularly the functions and responsibilities of the leading officials should be delineated with care, so that they will be known to the offices and citizens alike, and responsibilities can be fixed. Every official carrying responsibility should be given adequate power to fulfill the expectation of the citizenry with regard to that responsibility. Power must match duty at every juncture in the performance of municipal functions.

Mere language may not prevent, but it can reduce the probability of the spectacle of leading local officials heading on collision courses or being at cross-purposes with each other. If they do, the blame is easier to identify and isolate.

The charter will have to establish, first, the basic form of government which the city shall have. The duties of the legislative body, mayor, and of the chief administrative officer or manager, if those positions are provided for in the charter, will have to be defined. Basic questions cluster around issues of how to structure the governing body: Will elections be conducted at-large or by districts or wards? Will they be partisan or nonpartisan? Will nominations be by petition, primary or conventions? How long will the terms be and will they be staggered? Will terms of office be limited? How many on the council? What will be the procedure for adopting ordinances and when will they take effect?

Most Michigan charters contain at least ten or twelve chapters covering the following subjects: Incorporation and powers, elections, the legislative body, legislation, administration, general finances, budgets and contracts, taxation, special assessments borrowing, utilities, miscellaneous provisions, and a transition schedule. There may be other chapters especially addressed to matters of prime local concern which it is desired to install permanently in the charter rather than leaving to ordinance or contract treatment, such as: a hospital, museum, art center, library, pension system, civil service, electric or water distribution facility, transportation system, and so on.

Charter Commission Procedures

The elected charter commission, of course, constitutes the vehicle by which the people undertake the writing of a document for the permanent provision of their own local government. Its membership is of obvious significance. As the session gets down to business, it may be found that the voters have already assisted in writing the charter by selecting members of similar views. If so, difficult issues will already be settled, such as the form of government to be selected, the elections provisions, the extent of powers, and so on.

Here, too, is an opportunity for the people, singly and in groups, to make their views known to a body which can do something about them. While the commissioners exchange their own beliefs,

the voters can advance their ideas, orally or in writing, to all or some of the commissioners. In this way, the process of charter writing can become excitingly responsive.

One possible alternative should not be overlooked: The charter amendment process. The basic problems experienced by a municipality may prove to be in one or more areas of consideration which can be corrected logically by one or two charter amendments. It is far simpler, particularly if the city council is agreeable, to submit one or more amendments for consideration by the electorate and it is less expensive. A three-fifths vote of a council on an amendment resolution will place such a question on the ballot; otherwise a petition signed by five percent of the registered voters may propose an amendment.

Form of Government

Of the several forms of city government which have been devised in times past, it appears clear now that two basic forms are being considered for a city, irrespective of size: the strong mayor and the council-manager forms of municipal government. We will not burden this paper with a discussion of other forms which have largely disappeared, such as the weak mayor and commissioner types of government.

Strong Mayor

The strong mayor system of local government contemplates the direct at-large election of a mayor with responsibility for political, policy, and administrative leadership. In its pure form, the council will be largely a law-making body with its major continuing influence over administration limited to the budget adopting process. Since election procedures cannot assure and seldom produce a mayor with all of the remarkable qualities required by this form of local government, the charter frequently empowers the mayor to appoint a chief administrative officer or business manager to administer day-to-day operations of the city government and supervise its various departments. A strong mayor is usually given the power to appoint department heads without council confirmation, prepare the budget for submission to the council, and provide policy leadership generally. The mayor is usually given veto power over council ordinances and sometimes other action, but the council may override the veto by a special majority.

Such a mayor will have the power base of an at-large election from the entire community, which at least equals the power base of anyone on the council. The mayor's office will be the focal point for promotions and protests by interest groups and the complaints by individual citizens alike.

Among the advantages cited by proponents of this form are the strong political leadership it provides, the efficiency of centralized power, and the responsiveness of the mayor to the public will. Among the disadvantages are the dangers inherent in one-person rule, leading to bossism, patronage spoils and other classic evils, the fact that a strong mayor is not necessarily an efficient administrator, and the heavy burden it places upon a single individual. Most cities in the United States over about 500,000 appear to favor the strong mayor form of government in one or another of its many variations.

Council-Manager

In the council-manager form of government, the council plays a much more prominent role. It is not only the law-making body, but it is also the focal point for policy-making and political leadership. It is the forum in which these needs are provided. In its pure form, the role of the mayor is greatly reduced. The mayor is selected by the council itself, "one among equals," having a voice and a vote but no veto, and acting as chair of the council and executive head of the city government for ceremonial purposes. The mayor may or may not be given the power to appoint the manager, and the city boards and committees, usually subject to confirmation of the council. Administration of council policies and budgets will be left to the care of a qualified, professional city manager with experience and expertise in municipal administration. The manager will select and may dismiss, with or without council approval, the department heads and other important officers of the city administration so that they will report and be responsible (and responsive) to the manager. The professional manager will carefully avoid over-participating in political issues, but will share a partnership role with the council as far as basic policy-making is concerned. The charter will usually contain express limitation on interference by council members or the mayor with any administrative function under the manager's supervision.

While the strong mayor will probably be compensated on a full-time, full-energy basis, the mayor and council in a manager city will probably receive no more than nominal compensation. The advantages of the council-manager form cited by its proponents include the claim that the job gets done in an efficient businesslike manner, political influence on employees and programs is reduced, and professionalism encourages services and improvements on a need rather than a political basis. The disadvantages cited by opponents are: the manager is not necessarily responsive to the public desires, and political leadership is discouraged and dispersed.

Hybrids

There are many options open to a charter commission, even though it may seem that the restrictions imposed on local government by legislation in the Home Rule Cities Act and other statutes are maddeningly needless and frustrating. One of these options, of course, is the opportunity to attempt to "blend the best of both" the above forms of government.

However, this almost always proves to be a difficult task. Invariably, the lines of authority become confused and fuzzy, and opportunities multiply to cross over from policy to administrative activities or the reverse. Even in a council-manager form of government no mayor is really "weak" but frequently devotes substantial time to the activities of the office, even though the compensation is nominal. Such mayors must be astute and well grounded in the distinctions of the two offices to avoid interfering with the management prerogatives vested in a city manager.

Likewise, a strong mayor who does not have the special qualities required of such an officer may leave a void which invites participation and leadership on the part of the council members or department heads whose stature and influence are well established. Thus, this is one of the areas in which any mixing of the two lines of responsibility and authority must be most carefully delineated, if attempted at all.

It has been generally understood that cities are not fettered by the separation of powers doctrine. That doctrine, as expressed by the 1963 Michigan Constitution, divides the powers of government into legislative, executive, and judicial branches and prohibits the exercise by one branch of the powers belonging to another branch. The doctrine is an inherent part of the state and national governments and is intended as a constitutional set of checks and balances on the states and federal government as sovereign powers. Local units of government are not sovereign, but creatures of state government, and, as such, subject to other constitutional and statutory limitations on local government power. It would seem that the separation of powers is not essential at the local level, unless the local electorate chooses to adopt a charter with some such provision. The council-manager form of government implicitly recognizes this difference by subordinating the appointing executive to the appointing legislative body.

The Question of City Power

There are two very real alternative approaches to charter drafting: whether the people and their charter commission wish to consider the charter in the light of a grant of powers to the city government, or in the light of a limitation on powers of the city government.

These two concepts may be employed generally throughout the charter or in specific areas of concern. The powers it may exercise may be listed in detail, suggesting that all other powers are denied, as will be discussed later. Or a specific area may be isolated for restricted treatment, such as taxation, special assessments, borrowing, initiative and referendum and so on. Thus, any particular power or powers may be made easy to exercise or difficult to exercise. Checks and balances may be kept to a minimum or may be extensively used in many different proceedings. A vote of the people may be required before significant projects are undertaken, or such decisions may be left to the mayor or council.

For charter purposes, of course power and its exercise is an enduring thing. Many officials of varying talents and dedications will hold the various offices throughout the probable history of a given charter. And conditions will surely change in significant ways during that period. The racial balance of a community, its economic conditions, the average age of its citizens, their educational level, and the land use of large areas will probably go through many changes. While some citizens will feel that powers should be granted to cope with these unknowns, others will feel powers should be limited to prevent possible abuses through the years.

Defining the Scope of Powers

In defining the powers of both the city at-large and the individuals within the structures the charter commission will have to consider one of the most complicated and unsettled issues confronting such commissions in Michigan at the present time. This is the principle that “*inclusio unius est exclusio alterius*,” namely, the inclusion of one is the exclusion of others.

Some charters contain numerous recitations of specific powers which shall be exercised by the mayors, councils and managers involved, pursuant to a revived Dillon rule concept. Thus, it is inferred that activities listed are intentionally “excluded” or prohibited. Other charters rely upon a general home rule statement to the effect that the city is vested with and may exercise any and all

powers which cities now or may hereafter be required or permitted to exercise or to provide for in their charters as fully and completely as though said powers were specifically enumerated therein.

Through the years, the Michigan Supreme Court has established a reasonably good record of supporting the home rule concept in spite of a few deflections in which Judge Dillon's rule has been recited with approval. The main line of comments from the court has supported the thesis that local government may still exercise all powers necessary, or expedient for its purposes so long as state preemptions are not invaded.

In recent years the cities of Michigan have been encouraged by court judgments to engage in off-street parking, transportation systems, solid waste disposal, and other activities without express reference thereto in their charters.

As years pass and conditions change, the most comprehensive listing of powers will probably overlook some newly developed need of a dynamic city. Since many unforeseeable demands may lie ahead for the average city of Michigan, it is essential that it rely heavily upon general powers and the "liberal construction" rule in the state constitution.

Use of Ordinances to Implement Charter Provisions

A charter commission can avoid a lot of work and make the charter shorter and more flexible by simply directing the use of ordinance procedures in a wide variety of situations. A charter amendment takes a vote of the people, whereas the council has the power to amend an ordinance. Thus, needlessly detailed provisions in the charter become "cemented in."

On the other hand, this may be the exact result the citizens and commissioners desire. They may want to prevent political tampering with a pension program, a hospital, library, museum, or some other locally favored activity.

A compromise between the two extremes may be effected by covering the subject in general terms in the charter, perhaps inserting guidelines in some detail, but leaving the greater detail to be established by ordinance. This approach is used increasingly in such matters as special assessments, for instance.

We have referred repeatedly to "changing conditions." A good illustration is the grant, by state law, of collective bargaining powers to local government employees. Some cities have found that charter civil service provisions have been superseded by provisions of a collective bargaining agreement dealing with subjects within the scope of bargaining for wages, hours, and conditions of employment. Under public employment labor relations law, such a contract provision prevails over a conflicting charter provision.

Timing of Elections, Budgets, Taxes and Contracts

In the drafting of any charter, there is a particularly complex problem relating to the timing of various activities involved in meeting the needs of the people. We allude to the timing of elections, budgets, taxes and improvements. It is usually desirable to have the elections conform to a schedule which will permit the taking of office in adequate time for a thoughtful consideration of

the new budget, reflecting possible new policies, the imposition of taxes supporting that budget, and the resulting construction year in which capital improvements may be financed, contracted, undertaken and accomplished.

It is doubtful if any charter achieves perfect timing in this regard. In our temperature zone, construction of improvements such as sewers, paving and the like are limited to the months of April through October. Much groundwork must be done prior to those months in budgets, taxes, engineering, special assessments, and borrowing to support such programs. Then contracts must be arranged. Meanwhile, the election process is conducted in such a way that newly elected officials may or may not be entitled and empowered to bring their judgments to bear upon projects which are already under way. This subject must be given careful consideration by any charter commission in an effort to make the timing of these various events as appropriate to the needs of the community as is possible.

State Review of Charter

The charter commission has the power to call an election at which the charter is to be submitted to the voters. It must be submitted to the governor for review, whose approval, however, is not required to make the charter valid if adopted by the people of a city. Nevertheless, such approval is usually highly desirable from a political point of view.

While the law does not direct it, the governor invariably submits the charter to the attorney general for review and recommendations. This tradition results in a written opinion from the attorney general's office to the governor. The governor approves and signs the charter or returns it to the commission with objections. Although the act is not explicit, presumably the commission can call off the election or go ahead with it. Usually the time is rather short, and the election is held. If the charter is approved by the voters, it stands as a valid charter until otherwise ruled by the courts.

If the charter is rejected, the home rule act permits the charter commission to reconvene, make such changes in the draft as it desires, and resubmit it to the voters.

Transition

Naturally, provision must be made in a proposed charter for an orderly transition from the present to the proposed government. This usually appears in a final transition chapter which contains only features of temporary significance. For instance, an election of the entire proposed council and official family can be arranged to take place concurrently with the vote on the proposed charter, conditioned upon the latter's acceptance.

If the election of officers is deferred to a later time, the date of the primary, if any, and the general election should be identified, along with the date on which the new officials take office and the previous government is terminated. Some of the previous officers may be held over for a time to accommodate a staggered-term arrangement. Here, too, timing becomes an important factor and should be given careful consideration.

Provision must be made, either in this transition chapter or elsewhere, for the continuance of ordinances, pending causes, boards and commissions, transfer of property, and the rights and duties of the city at the time the new government takes over.

Conclusion

We have undertaken here only a bird's eye view of the nature and purpose of a home rule city charter. We could expand upon almost every sentence and phrase which has been written. Space and patience dictate otherwise.

The charter commissioners should not think their work is done when the draft is completed. They must now see that the electors are fully informed so that they can make an intelligent decision. They should actively support it during the campaign, explaining the advantages to be gained from their work. Assuming a take-it or leave-it attitude will almost certainly result in rejection of their long and tedious labor.

The commission may submit to the voters up to three versions within the three-year period following their election to office. They can make revisions on items which may have been the cause of the rejection of their earlier draft. Thus, a give-and-take process can occur between the citizens and commissioners as together they strive to agree upon an acceptable document capable of meeting the needs of the people. That is the essence of home rule.