

# **LOCAL GOVERNMENT CHARTERS**

## **Chapter 3 – Montana’s Local Government Review**

### **Ken Weaver, Judith Mathre**

The local government article of Montana’s 1972 Constitution provides three important mechanisms for increasing the flexibility and accountability of Montana’s local governments: (1) the periodic Voter Review of local government, discussed in Chapter 2; (2) the acquisition, with voter approval, of self-government powers (with or without a charter), discussed in Chapter 4; and (3) the authority for both counties and municipalities to adopt, with voter approval, a self-government charter. Thus, Section 5 of Article XI of the new constitution mandated that the state legislature provide procedures permitting a local government to “...frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question.” Additionally, Section 5 goes on to specify that a local charter adopted by the voters does not require approval by the legislature or any local governing body and that charter provisions establishing executive, legislative, and administrative structures and organization are superior to state law in these areas. In turn, the 1975 legislature responded to the mandate of the Constitutional Convention by incorporating the charter-writing process into state law, now encoded at 7-3-701 through 709, M.C.A..<sup>1</sup>

By enabling citizens to develop their own, locally devised and approved instrument of self-government, the 1972 Constitution added Montana to the roster of some 47 other states which permit local government charters. In doing so, the legislature enabled Montanans to devise any arrangement of local governmental structures and functions they might choose so long as the charter provisions do not violate our federal or state constitution or state laws. Most of the 35 charters now in effect in Montana county and municipal governments<sup>2</sup> characteristically assert self-government powers and then go on to replicate the familiar structures and functions of one of the five basic local government forms specifically authorized by law. (See Table 3-1 below for a comparison of the characteristics of all local government charters in Montana). Here it is worth noting, however, that the adoption of a self-government charter creates a statutorily recognized and distinct “form” of local government referred to in state law as the “charter form.”<sup>3</sup>

Moreover, Section 6 of Article XI declares that a local government which adopts a charter is endowed with self-government powers, which include “. . . any power not prohibited by this constitution, law or charter.”<sup>4</sup> What follows in this chapter is a definition of a local government charter, including a summary of the statutory requirements in writing a charter; a brief summary description of two primary considerations in charter adoption; and a comparison of the important characteristics of those 35 local government charters now in effect.

## Charter Defined

Constitutional Convention Delegate Lucile Spear of Missoula provided her fellow delegates with a perfectly good functional definition of a local government charter during floor debate on the adoption of Article XI:

*There are two important elements in a local government charter, the structure or form of government and the powers of local government . . .*<sup>5</sup>

More generally, a charter is the local government equivalent of a state or national constitution, although it is of course subordinate to both. Ideally, a local government charter is a written document, approved by the voters within its jurisdiction, which defines the powers, structures, privileges, rights and duties of its local government and sets forth any limitations thereon.<sup>6</sup> In Montana, a charter is a voter-approved, written plan of government that *must* include:<sup>7</sup>

- An elected legislative body (which may be called a commission or council) or shall provide for a legislative body comprised of all qualified electors (a town meeting form of government) and the legislative body is the “governing body.” The charter must also specify the number of members of the elected governing body, the terms of office, whether elections are to be partisan or non-partisan, districted or at large, the grounds for removal from elected office and the method for filling any vacancies in elected office.
- An elected or appointed chief-executive (mayor, manager or plural executive); the term of office if an elected chief-executive (mayor) or at the pleasure of the governing body if an appointed chief-executive (manager); the powers and duties of the chief- executive and the grounds for removal from office. Alternatively, the charter may provide for a plural executive drawn from the legislative body, as in the case of the traditional elected commission form of county government.
- The date on which the charter shall take effect.

Beyond these essentials, a charter *may* specify:

- Any additional officers, departments, boards, commissions, agencies as may be desired;

- Any limitations or prohibitions on the local government's exercise of self-government powers (such as taxation limits) which are automatically acquired upon voter approval of the charter;
- Other provisions, even though not listed in state law, so long as they are not contrary to the constitution or law.

A local charter *may not* include:

- Provisions which conflict with state law establishing statutory prohibitions or limitations on the powers of self-governing units of local government;<sup>8</sup>
- Provisions establishing election, initiative or referendum procedures;
- Provisions establishing or modifying local court systems.

Finally, charters may only be amended with voter approval, as required by state law.<sup>9</sup>

## **Considerations in Charter Adoption**

There are two primary charter characteristics that deserve the particular consideration of those who seek to draft a local government charter as well as those who must decide whether or not to vote for the proposed charter. The first of these considerations is the automatic acquisition of self-government powers that goes along with charter adoption. The second important consideration is the structural form of the local government included in the charter. Both considerations are reviewed here briefly.

***Self-Government Powers.*** Because the nature of self-government powers is considered in some detail in the succeeding chapter, it is sufficient here to note that self-government powers generally expand the scope of local governing authority to include those powers, functions, services and structures not otherwise prohibited by state law. For example, under its self-government charter the City of Libby is enabled to operate an electric utility which it would not be legally authorized to do if it did not have self-government powers. Similarly, the City of Billings provides a broader array of services than would otherwise be permitted without the self-governing powers conveyed by its charter.

Because self-government powers are gained automatically at charter adoption it is especially important to consider carefully what, if any, limitations on these expanded governing powers might appropriately be specified in the local charter. While most charters include no such limitations, many do. (See Table 3-1 below). The most commonly included limitation written into charters has been a limitation on the taxing authority of the local government. Even though the legislature has, since the adoption of the 1972 Montana Constitution, increasingly limited the taxing authority of local governments,<sup>10</sup> a number of charters have nevertheless included quite specific taxing limitations, such as: specific property tax mill levy limits (Billings); limiting taxation authority to that of “general powers” local governments, ( i.e. those local government units without self-government powers); or requiring voter approval of any new taxes (Anaconda-Deer Lodge).

Arguably, therefore, one of the most important characteristics and advantages of a charter is the enumeration of any specific constraints on a local government’s governing authority. A charter can and should reflect any limitations thought to be necessary by a community wishing to gain the inherent but indeterminate flexibility of self-government powers. Those communities which might wish to acquire a greater degree of local flexibility by acquiring self-governing powers but without benefit of a charter would, as a consequence, be unable to impose any local limitations on the governing powers of their municipal or county government.<sup>11</sup> Moreover, even if the community finds no particular reason to impose limitations on their local government at the time the charter is adopted, having a voter approved charter facilitates the incorporation of any future limitations thought necessary by means of a voter approved amendment. We note that while one county charter and one municipal charter have been abandoned<sup>12</sup> and at least nine of the 35 charters currently in effect have been amended by their voters.

***Structural Plan of the Local Government.*** As noted above, the adoption of a charter creates a statutorily defined alternative “form” of local government even though the structural characteristics of that government set forth in the charter may simply replicate any one of the five familiar forms of local government whose structures are mandated in state law and which include the: commission, commission-chairman, commission-executive, commission-manager, and town-meeting forms.<sup>13</sup> The principal advantage of detailing in a charter the structural characteristics and working relationships of the preferred form of local government is the improved clarity of roles and responsibilities of the legislative and executive branches of the local government. Absent a charter, local officials must depend upon their interpretation of the inherently ambiguous general statutes which provide the legal basis for the structures and responsibilities of each form of government. As a consequence, a substantial degree of uncertainty, even conflict, plagues commissioners, council members, mayors and managers concerning their proper roles, responsibilities and the appropriate relationship between the legislative and executive branches in

the statutory version of their local government.

A well written charter can and should define in detail the expected roles, responsibilities and relationships of and between the commission, the chief executive and the several departments. In doing so, the local charter itself (rather than the less than “user friendly” law books) becomes the primary source document in educating newly elected officials, and perhaps reminding even experienced local officials and the community at large, concerning the expected roles and responsibilities of elected officials. In this regard, it is important to recall that, “Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.”<sup>14</sup>

A detailed discussion of the advantages and disadvantages of the various structures and relationships of each of the forms of local government is provided in Chapter 1.

## **Charter Characteristics**

Table 3-1 below compares the structural characteristics of local government that have been incorporated into the state’s 35 self-government charters. What follows here is a brief narrative highlighting some of the more salient characteristics detailed below.

First, we note that all but eight of the 35 local government charters now in effect in Montana have been the result of Local Government Review. Laurel, Libby, Lima, Red Lodge Troy, West Yellowstone and Whitefish successfully sought self-governing powers by means of charter adoption *outside* of the Voter Review process, generally to accomplish a local goal otherwise not possible to achieve as a “general powers” government.<sup>15</sup>

Eight of the now existing charters were adopted during the first and mandatory Voter Review cycle; only two gained approval in the 1986 cycle; eight were approved in the 1994-1996 cycle and in the 2004-2006 cycle nine new charters were adopted. Here too we should note that 28 (80 percent) of the 35 charter governments are located in the western half of the state where one might expect to encounter the greatest community and local government stress associated with the rapid population growth experienced in western Montana during the several past decades.

In passing, it is perhaps noteworthy that only three (5 percent) of Montana’s 56 county governments (including the two consolidated governments) now operate with a self-government charter, whereas some 32 (25 percent) of the state’s municipalities now operate with a charter. Ironically, it would seem that, of the several forms of local government possible in Montana (and

nationally for that matter) none would benefit more from clarification of governmental roles, responsibilities and relationships than the familiar and even venerated commission form of Montana county government.<sup>16</sup> Given the fact that Montana voters have approved only four of the 63 county charter proposals that have been placed on the ballot during the four cycles of Local Government Review, one of which was repealed (Madison County), we can only infer that the familiar courthouse structures of county government are generally trusted by their voters who apparently view them as generally adequate to deal with the modern problems that counties must confront.

With respect to electoral requirements, it is perhaps a bit surprising that half of the charters call for continuation of electoral districts wherein the candidate must reside, as a qualification for election to the governing body. Interestingly, two of these eleven communities also elect one council/commission member at large, in addition to the election of the remaining members by ward. Perhaps less surprising is the uniform abandonment of partisan elections in all of the municipal charters. On the other hand, few would have guessed that a Montana county government, and perhaps especially the Butte-Silver Bow government, would abandon the election of local officials by party label. Yet, all three county charters now call for non-partisan elections for both the commissioners, the chief executive officers and the elected department heads.

Finally, we note that the majority of charters impose a taxing limitation of some kind on their local government. Most typically, the charter limits the property tax mill levy to a specific amount or to the statutory mill levy limit of a local government possessing only “general powers.”

In the appendix following this chapter are examples of self-government charters for each of the five forms of local governments encountered in Montana. Most of these sample charters are modified versions of charters which have been adopted by county or municipal governments in Montana. The modifications include deletion of any reference to the names of local governments and deletion of any locally imposed limitations imposed upon self-government powers. Additional minor changes were made to correct spelling or non-standard language usage.

These charter examples are not offered as literal models to be replicated by others but, rather, are intended to demonstrate the charter writing results accomplished by previous study commissions.

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1. First encoded in 1975 at 47A-3-208, R.C.M.

2. In fact, 37 local governments in Montana have actually adopted self-government charters. In 1982, the voters in

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Madison County abandoned the charter previously adopted by them in 1976 and, in 1980, the voters in Poplar abandoned their charter also previously adopted in 1976 during the Voter Review process. Hereafter, we will refer to 35 adopted charters, excluding the Madison County and Poplar municipal charters from further consideration.

3. See 7-3-102, MCA.

4. Article XI, section 6 also enables units of local governments to acquire self-government powers without adopting a charter by means of voter approval of an alteration of their statutory plan of government.

5. *Transcript of Proceedings: Montana Constitutional Convention*, Volume X, March 15, 1972 - March 17, 1972, p.7702. See also James J. Lopach and Lauren S. McKinsey, *Handbook of Montana Forms of Local Government*, Publication No. 10, Bureau of Government Research, University of Montana, July 1975, pp.49-53.

6. See 7-3-703, M.C.A. and 7-1-4121 (1), M.C.A.

7. See 7-3-704 through 709, MCA for the mandatory provisions of a self-government charter.

8. See 7-1-111 through 115, MCA for a listing of the legislatively imposed limitations on local self-government powers.

9. See 7-3-103, MCA and 7-3-123, MCA for the procedures to amend a charter outside of the Local Government Review process.

10. See, for example, 15-10-402, MCA freezing local government property taxes as a result of SB 184, adopted by the 1999 Legislature.

11. Nine additional municipal governments have acquired self-government powers without adopting a charter as permitted by Article XI, Section 6, The Constitution of the State of Montana.

12. See endnote 2, above.

13. See 7-3-111 through 114, MCA for the statutory basis of each of the traditional forms of local government.

14. Article XI, Section 5(3), The Constitution of the State of Montana, included at Appendix to Chapter 1 and 7-3-701, M.C.A.

15. For example, Libby and Troy each sought self-government powers to enable their municipal governments to operate an electric utility and West Yellowstone wanted self-government powers to gain flexibility as the first local government in Montana to collect and spend local "resort taxes." Laurel was primarily interested in the acquiring the authority to create a "chief administrative officer" who could provide assistance to the elected mayor in a fast growing community.

16. See 7-3-111, MCA for the statutory basis of the "elected county official" form of government. which was specifically identified and enabled by the both the 1889 Constitution as well as the 1972 Constitution. See also Dawn Cowan and Tanis Janes Salant, *County Charter Government in the West*, Office of Government Programs, School of Public Administration, The University of Arizona, 1999 for an analysis and comparison of the governmental structures incorporated into county government charters in the western states.