

Revising City Charters In New York State

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INTRODUCTION

What is a city charter? It is the basic document that defines the organization, powers, functions and essential procedures of the city government. It is comparable to the State Constitution and to the Constitution of the United States. The charter is, therefore, the most important single law of any city.¹

Why should cities undertake charter revision? There are several reasons, generally stemming from the fact that a charter affects everything the city government does. It provides the basis for most municipal regulatory functions and for the delivery of municipal services.

An obsolete charter can be responsible for many municipal problems. If it contains provisions which are unworkable under current conditions, municipal officials may have to make a difficult choice between being responsible for inferior service delivery or inviting legal challenge for deliberate, albeit well-meaning, deviation from the law. Until such provisions are eliminated, the most competent officials will be unable to carry out their responsibilities both efficiently and legally.

Even though a charter may not be so obsolete as to present dilemmas of conscience, revision may well lay the basis for improved governmental operations. A good charter should provide a clear distribution of the powers of city government and clear descriptions of the duties and powers of municipal officials.

A common failing of many city charters which were written prior to the early 1960s is that they often covered every detail of city operations, perhaps in an attempt to ensure certain home rule powers. The length and detail of those older documents tend to discourage citizen interest and understanding. Now that home rule is more securely established, charters can be (and often

are) used to delineate basic powers and structure while leaving the details of operation to be covered in an administrative code. It is essential for effective citizen participation that the general public be able to understand the basic document of their municipal government.

Many existing charters have been weakened and complicated by frequent piecemeal revisions over many years. They may need comprehensive review to determine the extent of revision required and to ensure internal consistency.

Charter revision can result in improved city government organization and operations. Reconsideration of governmental structure can result in elimination of costly unproductive positions. Clear delineation of lines of responsibility and authority facilitates the work of municipal officials, legislative as well as executive.

HISTORICAL BACKGROUND

The first State Constitution, adopted in 1777, recognized the colonial charters of two cities, New York and Albany. The Constitution further provided that the legislature should “arrange for the organization of cities and incorporated villages and to limit their power of taxation, assessment, borrowing and involvement in debt.” Thus, a special legislative act was required to establish each new city and to amend a city charter. However, as the home rule power of cities in New York expanded, cities won the right to amend their charters by local law.

By 1834, seven new cities had been chartered along the State’s principal trading route, the Hudson-Mohawk arterial between New York City and Buffalo. These new cities were Brooklyn, Buffalo, Hudson, Rochester, Schenectady, Troy and Utica. Thirty-two more

cities were created between 1834 and 1899 as thousands of immigrants were drawn to the State to work in the multiplying and expanding industrial and commercial enterprises. The most recently chartered city in New York is Rye, which came into being in 1942, bringing the number to the present total of 62.

In the absence of a general law providing for the incorporation of cities, city government in New York differs substantially from city to city, although the basic purposes and functions of cities are similar.

Since each city has been separately chartered by the legislature, there is no general constitutional or statutory standard of population or geographical area. As a consequence, the populations of the cities (other than New York City with its more than 7 million people) range from 2,864 (Sherrill) to approximately 328,100 (Buffalo). Land areas range from 0.9 square miles (Mechanicville) to 72 square miles (Rome) with 303.7 square miles in New York City.

There is no concept of progression in size among local governments from village to city. Forty-nine of the State's 62 cities had 1990 populations smaller than that of the largest village, and 182 of the State's 556 villages had more residents than the smallest city.

The struggle for increased home rule powers for cities in New York State has been long and hard. It was not until the late 1800s that the Legislature began applying statutes to cities generally rather than passing specific laws on individual local matters. Municipal home rule was a major issue at the Constitutional Convention of 1894, and as a result of its recommendations, cities were divided into three classes by population to enable the Legislature to pass general laws that would address the problems of cities of various sizes.

Finally, in 1924, a Home Rule Amendment to the Constitution, followed by the enactment of the City Home Rule Law, granted powers to cities to

choose their own form of government and to amend their charters by local law without special action by the Legislature. The provisions of the City Home Rule Law were incorporated without substantial changes into the present Municipal Home Rule Law when it was enacted in 1963.

CITY CHARTERS: THE CONSTITUTIONAL AND STATUTORY BASE

The nature and scope of subject matter which may be included in a city charter or charter amendment is that which the cities may accomplish by local law.² The grant of local law powers to cities is derived from the New York State Constitution, Article IX, as implemented by, and spelled out in, the Municipal Home Rule Law. Under this basic grant of local law power, cities may:

1. Adopt or amend local laws in relation to their "property, affairs or government" that are not inconsistent with the provisions of the Constitution or with any general law; and
2. Adopt or amend local laws not inconsistent with the Constitution or any general law relating to several specifically enumerated subjects, whether or not these subjects relate to the "property, affairs or government" of cities.

The term "property, affairs or government," as used in section 10 of the Municipal Home Rule Law, constitutes a broad grant of local law power to cities to manage their governmental affairs and operations and to discharge their responsibilities to satisfy local needs as those needs are perceived in the cities themselves.

Specifically enumerated areas in which a city may adopt local laws include:

- the powers, qualifications, number, mode of selection, removal, terms of office, compensation and hours of work of its officers and employees;
- the creation and discontinuance of government departments;
- the protection of its environment;
- the health, safety and welfare of persons and property within its boundaries;
- the licensing of businesses and occupations;
- the levy, collection and administration of local taxes and assessments;
- acquisition and management of real and personal property;
- authorization of benefit assessments for local improvements; and
- the membership and composition of its legislative body.³

In some instances, a city's scope of authority to adopt and amend its charter may be broader than the city's local law power. The provisions of any existing charter, or general or special state law previously enacted conferring a right, power or authority or imposing a duty or obligation on a city may be continued in a new city charter or amendment of an existing charter.⁴ If, therefore, the State legislature has delegated a specific power to a city, even though the city in the first instance had no authority by local law to assume for itself such power, the power may be continued in a new charter or amendment of an existing charter.

Restrictions on the Content of City Charters

The power of cities to enact local laws is subject

to several limitations which likewise limit their authority to adopt and amend their charters.

First, the constitutional grant of authority to cities for the adoption of local laws itself contains certain restrictions. A local law cannot be inconsistent with a general state law or the New York State Constitution. A general law is a law enacted by the State Legislature which in terms and effect applies alike to all cities.⁵

Second, the State Legislature in enacting the Municipal Home Rule Law (section 11), specifically restricted the adoption of local laws with respect to several particular subject areas. For example, a local law may not supersede a state statute if the local law removes a restriction relating to the issuance of bonds or other evidences of indebtedness; affects the maintenance, support or administration of the educational system or a teachers' pension or retirement system; or applies to or affects the courts.

Third, the scope of local law authority is restricted with respect to subjects which the courts have determined to be areas of state concern.⁶ A matter of state concern is a subject area which the courts have decided affects the residents of the entire state rather than only the "property, affairs or government" of a particular locality. The courts have determined that such areas include taxation, transportation and highways, parks, incurring of indebtedness, water supply, education, social services, health, banking, rapid transit, civil service, housing and municipal boundaries. Generally speaking, a city may not adopt a local law relating to a matter of state concern unless such enactment is authorized specifically by the Municipal Home Rule Law, section 10(1)(ii) or unless the State Legislature has specifically granted such power to the city.

Finally, local laws may not be enacted with respect to subjects for which state law clearly indicates a state purpose to preempt or

completely occupy a particular field.⁷ Preemption occurs when state regulation in a particular area is so comprehensive as to indicate an intention to exclude local legislation.

Public Hearings and Referenda

When city charter revision is to be accomplished through the adoption of a local law by a legislative body, a statutory public hearing is required, as is the case prior to enactment of any local law.⁸

In the case of charter revision submitted by a commission or voter initiative, a public hearing is not mandatory, but highly desirable.

The Municipal Home Rule Law section on charter revision by commission does specify that a charter commission is responsible for publicizing the provisions of the proposed charter or amendments.

A local law, enacted by a city council, establishing a new charter for a city, is subject to mandatory referendum.⁹ Amendments to existing charters by local law may be subject to referendum, either mandatory or on petition, if they meet specific criteria enumerated in sections 23 and 24 of the Municipal Home Rule Law. A new charter or charter amendment proposed by elector initiative pursuant to Municipal Home Rule Law, section 37 must be submitted to the city's voters for approval, as is the case when proposed by a city charter commission.¹⁰

APPROACHES TO CHARTER REVISION

The Municipal Home Rule Law provides three ways to revise a city charter: by charter commission, by initiative and referendum or by direct legislative action.

Revision by Charter Commission

A charter commission may be established by any of three procedures set forth in section 36 of the Municipal Home Rule Law.

The city's legislative body may establish a charter commission by local law, or it may submit to the city voters the question (also in the form of a proposed local law, to take effect upon voter approval) of whether or not there shall be a charter commission. In both instances, the local law enacted by the council may either indicate the number of members of the commission or provide a method for determining the number. Whether the members shall be elected or appointed must also be specified. The local law also must prescribe the manner of appointment or election of commission members.

The mayor of a city may create a charter commission by appointing no less than nine nor more than 15 residents of the city to serve as members. The commission is established upon the filing with the city clerk of the mayor's certificate of appointment, which also will name the chairman, vice chairman and secretary.

The establishment of a commission by voter initiative requires signatures equal to 15 percent of the votes cast within the city for Governor at the last gubernatorial election — or 45,000, whichever is less. If the petition is found to meet all the requirements of law, the legislative body is required to submit to a referendum the local law as proposed. The local law must prescribe the composition and structure of the charter commission and provide a method for appointment or election of its members. It may also include the names of specific persons to serve on the commission.

After a charter commission has been created pursuant to section 36, it is charged with responsibility for reviewing the entire charter

and preparing a draft of a proposed new or revised charter. The new charter or amendments are to be completed and filed with the city clerk in time for submission to the voters at the next general or a special election. The proposed charter or amendments may be submitted in a single proposal or may be presented in parts with alternative provisions among which the voters may choose.

Charter Revision by Initiative and Referendum

A city charter may be amended under section 37 of the Municipal Home Rule Law. Under this method, if a number of city voters equal to at least 10 percent of the votes cast for Governor in the last gubernatorial election — or 30,000, whichever is less — sign a petition for submission to the voters of a proposed local law providing for a new charter or charter amendments, the initiative process is under way. The petition and proposed charter changes are filed with the city clerk, who is required to determine the legal sufficiency of the petition, subject to judicial review. Whether or not the clerk determines that the petition is legally sufficient, he is required to submit the proposal to the city legislative body.

If the proposed changes to the charter are not of a kind which require a mandatory referendum, the legislative body may, if it wishes, adopt the proposed local law itself. If the proposed changes require a referendum, the legislative body may submit the proposal to the voters at the next general election.

If, however, the legislative body fails to adopt the petition without change within two months following its filing and such petition meets all the requirements of law, a number of voters who did not sign the original petition equal to five percent of the votes cast for Governor at the last gubernatorial election — or 15,000, whichever is less — may file an additional petition with the city clerk requiring the submission of the proposed

local law at the next general election for voter approval.

If this additional petition is found to be adequate, the clerk is required to present the matter to the election officials for referendum without further action on the part of the legislative body.

If the proposed local law amending or revising the charter receives the majority of the votes cast in the referendum, it is adopted, and the new charter or charter changes will be in effect as provided in the proposal.

Charter Revision and Direct Legislative Action

A third method of revising a city charter is by direct action of the legislative body under its local law power as provided in section 10 of the Municipal Home Rule Law. Although this option is infrequently used, it is possible for a city council, for example, to proceed directly to revise the city charter in this manner rather than by creating an independent charter commission. In this case, the city council, in effect, constitutes itself as a charter commission and proceeds, usually through its own committees, to accomplish the amendment or revision of the charter. Whatever changes are agreed upon are then enacted by local law subject to mandatory referendum or referendum on petition if so required by the Municipal Home Rule Law, sections 23 and 24.

THE CHARTER COMMISSION: ORGANIZING FOR WORK

Establishment of a charter commission and initiation of its work involves the consideration of many preliminary details, such as composition, staffing, financing, organization and general procedures.

Only in the case of a mayor-appointed commission are there legal provisions regulating the size of a charter commission: no less than nine nor more than 15 members. There is no hard and fast rule specifying the most desirable size of a commission. A major consideration in determining composition, however, which may influence the size, is the type of representation desired. Representation in turn depends to a great extent on the degree of social and economic homogeneity of the community. For example, in some cities where council members are elected by wards, each council member and the mayor appoint one person to the charter commission, thereby transferring to the charter commission much the same reflection of community interests as are found in the council.

The question often arises as to whether the appointees should be elected officials or lay citizens. There is no hard and fast rule which applies in all cases. Experience has shown, however, that elected officials and other key opinion leaders in the community have disproportionate influence upon the outcome of a charter revision effort. No matter how good a public opinion program (discussed later in this manual) is, opinions expressed publicly, pro or con, by well-known individuals are likely to have a significant impact on voters. It is, therefore, usually advisable that elected municipal officials play a meaningful role in the charter revision effort from the outset, to gain the benefit of both their experience and their sense of what will be acceptable to the public.

The most important consideration in the composition of a charter commission is that it include representation adequate to give a voice to the diverse viewpoints in the city, including political interests and ethnic communities, which are likely to have a stake in the substance of the charter. The formula for providing such representation must be devised with specific community characteristics in mind, since success in one city is no guarantee of success in the next.

The basic organization of a charter commission depends in part on how it came into being. If the commission was established by the mayor, the chairperson, vice chairperson and secretary will have been named by the mayor. In the case of a charter commission created either by the legislative body or by initiative, the choosing of these officers will be the first order of the commission, unless the legislation creating the commission also specifies its membership and organization. If no chairperson has been named, the mayor or a member of the legislative body can convene the first session of the commission.

Once the basic organization is established, the commission may wish to name a treasurer and parliamentarian and to set up a committee structure. It is usually desirable, however, to devise a work plan before the committee structure is determined.

Other issues that may be considered at the first meeting are:

- how often the commission will meet;
- whether it will establish its own set of rules or operate under general parliamentary rules (particular attention should be given to defining a quorum);
- how decisions will be made (by simple or extraordinary majority vote or by consensus);
- what are the commission's financial needs; and
- what type of expert assistance should be sought.

Provision should be made to supply each member of the commission with a copy of the current city charter before their deliberations start. At the same time, members should become familiar with the legal and constitutional provisions that affect the work of a charter commission and those relating to city

charters in general. Basically, this means learning about what the Municipal Home Rule Law says on the subject. One way of accomplishing this objective is to invite a speaker to attend a commission meeting.

Charter commissions may need two kinds of staff assistance: for gathering data and administrative analysis; and legal expertise of the preparation of a draft charter. It is also assumed that the commission and its staff will have, or have ready access to, adequate clerical and stenographic assistance.

The staffing of a charter commission can be provided in a variety of ways: management consultants and/or attorneys may be retained; full-time or part-time clerical and professional staff may be employed; or a combination of these arrangements may be suitable. Locating experts in charter work, however, is not an easy task, since several kinds of competence are desirable.

The members of charter commissions usually look first to the legal profession to find expert help, and legal expertise is essential to good charter work. An attorney who has experience in public affairs and/or the field of municipal law is well qualified to provide assistance.

Persons with special competence in municipal government organization, administrative operations and public administration can be found in universities, governmental research institutions and consultant firms. In some communities, a former public official with long experience in local government may be available to assist the charter commission.

Overall, municipal government generalists, working with legal counsel, can provide the competence needed for charter drafting and revision. The flexibility in staffing a charter commission, of course, will be determined largely by the financial resources available.

Realistically, a charter commission will need

some money to conduct its work. Even if consultant expenses are not to be incurred, the commission will need secretarial services, supplies, postage, printing and, perhaps, a small travel budget and funds for disseminating information to the public.

Potential sources of money to cover charter commission expenses include grants from public or private sources and in-kind services from city agencies, a local governmental research bureau or other private sources. Recognizing the diminishing fiscal resources of cities, it is nevertheless the city's responsibility to make some financial commitment to a charter revision effort which is designed to keep the city's fundamental law up to date. In any event, a charter commission without funds may find itself severely handicapped and a potentially successful product jeopardized.

THE CHARTER COMMISSION AT WORK: THE CHARTER PROCESS

Before a city charter can be drafted or revised, a substantial amount of preliminary work is necessary to ensure a good quality product. The entire process should be carried out in accordance with a plan. The question of how to ensure, to the greatest extent possible, the adoption of the proposed revised charter should receive careful consideration. Moreover, many specific issues must be explored, understood, discussed and resolved before actual charter writing is undertaken.

Work Plan for a Charter Commission

The preparation of a work plan and a timetable is recommended as the first step in the revision of a charter. An orderly method of proceeding

will facilitate the work of the commission, will enable the members to understand the relationship of their separate tasks to the overall project and will help to assure completion of the work within time constraints imposed by state law. While the work of the commission and its schedule will depend in part on whether or not it retains a consultant, the work plan will include common elements.

The timetable developed by the charter commission should set specific times for beginning and completing each of the elements. It will be apparent that it is possible to carry out more than one element at a time. In any event, the schedule will have to stay within time limits imposed by law and by a decision as to when the proposed revised charter is going to be submitted to the voters. A charter commission which sets out to accomplish a complete charter revision or the drafting of a wholly new charter is well advised to schedule its work over at least a full year.

A work plan normally begins with one or more orientation and education sessions for charter commission members. Normally included in this element is a general briefing on the functions of a city charter, some background information on principles of governmental organization and administration and examination of sample charters.

Research and analysis of the existing municipal government is necessary to permit commission members to identify areas of municipal organization and operations which can be improved by charter changes. Some charter commissions find that the city government is in some respects operating outside the charter, if not in violation of it. An important consideration, therefore, is to determine the extent to which the government is currently operating according to provisions of the charter. This step can be accomplished by a combination of two techniques:

- First, a review of operating budgets, departmental annual reports and other documents can reveal patterns of city government organization and operations.
- Second, a survey of the department heads and possibly other employees by questionnaire or interviews, or both, conducted by consultant staff and/or charter commission members can provide valuable insights to supplement testimony given by department heads at meetings of the charter commission. A sample outline of questions for such a survey is provided in the Appendix.

The charter commission might simultaneously undertake a general review and analysis of the existing charter because this work and the governmental survey are closely interrelated. Several questions to be answered during this preliminary phase are whether the charter is outdated, whether it is too detailed, whether it is ambiguous concerning the powers and duties of various city officials and operating units, and whether it is internally consistent. It would also be useful at this time to review the principal features of past charter revision recommendations and to determine, if possible, why they succeeded or failed to gain voter approval.

At this stage, the commission needs to consider key issues and have alternatives outlined for it along with a review of pros and cons for each option. It is at this stage, in the identification and description of key issues and alternative courses of action, that a consultant can provide valuable service. Lacking a consultant, the charter commission may want to seek out temporary assistance to guide it through the crucial stage of identifying and considering major issues and making decisions essential for charter drafting. It is essential, also, to follow a systematic format for orderly presentation and discussion of topics.

It is often desirable, during the deliberation

phase of charter revision, to provide opportunities for citizens and groups to express opinions on the main charter issues at public meetings set aside for this purpose. The information gained can be extremely helpful to commission members in assessing the public's receptivity to possible major changes, such as abolishing or adding an elective office. Several meetings of the charter commission can be set aside to receive public views on specific issues under consideration.

If possible, the commission should reach decisions on all major issues before charter drafting is started. If all major questions have been resolved, the commission will be able to devote full attention to questions on how the decisions can best be implemented. The charter drafter can then be given the necessary information and guidelines to prepare a first draft of a revised charter. An undisputed point is that the charter commission as a body cannot write a charter. If no consultant is available for the task, the commission members should be organized into small committees to handle the drafting of specific sections, with one person responsible for assembling the separate drafts into an internally coherent charter.

If the revised charter is a short document, it may be feasible for the commission to review the entire draft as a unit. Usually, however, it is preferable to present the draft one section at a time as it is completed. This procedure will divide the workload more evenly over time and avoid swamping the commission at the end with a lengthy document to be reviewed under deadline pressures. As discussion proceeds on these draft proposals, it is, of course, possible for the commission to reverse its judgments in light of further reflection, additional information or insurmountable difficulties in developing implementing language.

The only legal obligation to be met by the charter commission at this stage in the charter revision process is the responsibility for publicizing the provisions of the proposed charter or

amendments. Some cities provide for more extensive public review of the proposed document by printing and distributing copies in addition to holding full-scale public hearings.

As a result of the final public hearing, the commission may make further revisions in the proposed charter. When the document is at last in final form, it must be filed with the city clerk within the statutory deadline imposed on the commission's work for submission to the voters in accordance with the Municipal Home Rule Law.

The Charter Commission and Public Education

An effective public education program constitutes one of the most important aspects of a charter revision effort. From its first meeting to its last, a charter commission should consider its relationship to the public whose ultimate judgment of the commission's work will be expressed in the form of referendum votes. It is difficult, at times, to keep a new charter from becoming a political — even a party — issue. Opponents might adopt a critical stance with respect to a commission's efforts to educate the public about the revised charter, and particularly, with any effort it might make to advocate passage of the proposal.

Regardless of how it conceives its role, it is essential that the charter commission conduct a public education program. The earlier it is started, the greater the chances for generating and sustaining widespread interest in the community. Another benefit is to permit the charter commission to test public reaction to various viewpoints and proposals under consideration. In addition, it may be valuable in terms of developing public support for alternatives to the status quo to be proposed by the charter commission. Finally, the commission will want to prepare the voters to vote intelligently.

A variety of techniques can be used to conduct successful public education programs. During the initial phases of the charter commission's work, a member or subcommittee should take responsibility for issuing accurate and complete press releases following each meeting. Designated members, or in some cases, all members, can make themselves available for interviews and public appearances to explain the functions of the charter commission and create a positive image from the outset. Media representatives should be invited to attend all commission sessions.

Another successful method used in some cities is a series of public hearings. As was pointed out earlier, public hearings throughout the charter revision effort, though not required, can be an effective way of both increasing citizen awareness and measuring public opinion — a two-way process. The public hearing is also a vehicle for consulting various groups and organizations concerning their views and ideas on the city's government and charter revision. Among the most important groups in the community that should be consulted are city officials and employees. The public hearing can serve as a means for soliciting their ideas and opinions. It is essential to get their input in terms of information and advice on operations of the city and the possible effect of various charter proposals on municipal operations. By turning to these officials, and carefully considering their views, the commission may gain the support of this influential group.

The schools should not be overlooked as a medium for the conduct of a public education program. The preparation of a new city charter provides important and interesting subject matter for citizenship and public affairs education in the schools. This will educate future voters and will also inform older family members when students come home and discuss "what they did in school today."

The most active phase of public information

begins after the proposed charter revision has been drafted. The traditional public information techniques such as brochures with brief questions and answers, open letters with endorsements published in newspapers, interviews on news programs, and public service announcements on the media are equally applicable to charter revision efforts. One approach thought to be particularly beneficial is for charter commission members to explain the new charter in speaking engagements throughout the community.

Public opinion polls on specific issues may be of some value, although they should be used with caution, even when conducted by a reputable consultant, since it is often difficult to apply reliable techniques in relatively small areas. A further consideration is that professional polling is often excessively costly in relation to the value of the results.

Yet another option to be considered in implementing the public education program is publishing in a pamphlet either the draft proposed charter or a narrative final report of findings, or both. Many charter commissions have found that the narrative is most effective. It is a statement to the voters in language understandable by lay citizens. It can spell out the main features and merits of the new charter and explain why each provision was proposed. It can help to ensure that the impressions and interpretations made, especially by the press, are correct and as favorable as possible.

In addition to its concerns with keeping the public informed, the charter commission will want to keep in mind that yet another dimension of its purpose is to gain approval of its charter. Regardless of the thoroughness of the public education program, it will not be possible to reach and inform every voter who can be expected to vote in the referendum. As noted earlier, many votes are certain to be determined on the basis of comments expressed and positions taken by opinion leaders in the

community. It is therefore advisable to take three more steps: to seek help and support from influential citizen groups, to solicit editorial support of the local newspapers, and to obtain the endorsement of municipal officials and, if possible, political party leaders. Experience has indicated that any one or all of these may be especially significant in influencing the outcome at the polls.

THE MAJOR ISSUES FOR CHARTER COMMISSION DECISIONS

A commission undertaking a review and revision of a city charter will find it necessary to make some early basic decisions which will have much to do with the remainder of its work. Some of these will relate to the commission's objectives and its conception of its function. Others will relate to the determination of what kind of city government the commission wishes to propose and will result in part from the way the commission sees its purposes and in part from consideration of certain fundamental alternatives.

With exceptions for special local situations, the basic issues which call for decisions by a charter commission are much the same for all cities. Two issues related to the form of a city charter require decisions before the commission can proceed effectively with its work. The first of these is whether to revise the charter by amending specific provisions while leaving others relatively intact, or to draft a wholly new charter. The second, relevant primarily to wholly new charter drafting, is whether to propose a "long-form" or a "short-form" charter.

In deciding whether or not to propose piecemeal amendments to the existing charter or to propose a wholly new charter, the charter commission will weigh a number of basic considerations. The first of these is the mandate to the charter commission, which may or may not indicate clearly whether the

commission is to proceed with drafting a new charter or with amending the old.

A second consideration is the judgment of the commission members as to the reasons why the charter commission was created. To make this determination, the commission will want to analyze carefully the nature of specific objections to the existing charter. If the charter is merely old, contains archaic provisions and inappropriate or ambiguous language, or if some of its provisions have been made inoperative by state legislative or judicial action, it is possible that a piecemeal amending process may accomplish the desired purposes. If, however, in addition to all of these conditions, the deficiencies relate to important structural or operational arrangements in the city government, or if there is a desire to make basic changes in form and organization of that government, a wholly new charter is clearly indicated.

A third consideration will be the commission's judgment of how best to make the proposed changes intelligible to the voters of the city. Presentation of a number of separate proposals for change has the advantage of keeping controversial proposals from impairing the chances of less controversial amendments in a referendum. On the other hand, a host of seemingly unrelated proposals may confuse and bewilder the voters. It is difficult to produce a consistent, coherent result with a piecemeal approach to charter revision.

Lastly, the charter revision effort may be made an ongoing activity over a period of several years, if that seems desirable. Individual subjects or sections of the charter can be taken up and a limited number of revisions presented to the voters each year. This approach may work particularly well in areas such as financial procedures, which can be addressed independently. It should be noted, however, that the charter commission would have to be renewed after every election at which

propositions are presented.

In many cities, the number of controversial issues likely to cause a complete charter revision proposal to be defeated may in fact be quite limited. In such a case, New York law permits a compromise between presenting a single completely revised charter document and a series of separate amendments. What can be and has been done effectively is to submit to the voters a complete charter but with alternative provisions for those sections where lack of such a choice might generate sufficient negative votes to defeat the whole charter.

Whatever may be its final choice as to method of submission, a charter commission will want to make an early decision as to whether its objective is to produce a completely new charter or to propose a limited number of amendments. The commission's work plan and time schedule will depend largely on this decision.

How does a charter commission determine whether it will keep or produce a long-form or short-form charter? Most city charters are long, involved documents containing large bodies of detail relating to the organization and operation of the city government. The terms "short-form" and "long-form" relate to the amount of detail included in the charter document.

A short-form charter provides only for the structure and powers of the city government, establishes the basic offices and sets forth general operating arrangements. The details of organization and operations, and for implementing the powers and carrying out the functions of the city government, are left to an administrative code enacted by the legislative body as a local law. As a general rule, the charter is subject to voter approval but an administrative code is not, since it assigns no powers but only specifies how powers are to be exercised and how duties are to be carried out. A sometimes quoted rule of thumb is that a charter says "what can be done and provides the machinery for doing it, while an

administrative code spells out how it is to be done." While this statement is no doubt oversimplified, it suggests the basic distinction.

In recent years, the weight of opinion has favored the short-form charter and administrative code. For example, in the enumeration of powers of the city council, it is always safer to make a general grant of power, which is legal in New York State, than to try to list every power the council may need and thereby to run the risk of unintentionally limiting home rule. It is felt that the charter should serve as a framework within which the city government can solve problems as they arise, rather than as a well of solutions to every imaginable municipal problem. Thomas Reed, a well-known municipal consultant, some years ago advised, "The main purpose of a charter...is to empower, not to restrain. If that is kept in mind, your charter will not repeat the long-winded folly of some of its predecessors."

Determining the Form of City Government

A city charter commission faces a number of basic questions relating to the kind of city government it wants to propose. The bulk of the commission's work will be devoted to obtaining the necessary information to resolve these issues and to evaluating alternatives. In deciding the issues of charter content the charter commission will be making decisions that will largely shape the city government and thereby influence the future of the community.

In making a complete review of the city government, a city charter commission must decide whether to change the form of the city government. The following paragraphs outline the standard forms of city government in the United States and review some considerations involved in choosing among them. City government forms fall generally into four broad categories.

In a council-manager form, an appointed, professional manager is the administrative head of the city; the council is the policy-making body and the mayor, who may be elected by the voters or by the council from among its own members, is mainly a ceremonial figure. The manager usually serves at the pleasure of the council, has the power to appoint and remove department heads, recommends legislation, directs and supervises day-to-day municipal operations and prepares the budget. The manager does not have a veto power over council actions.

In a strong mayor-council form, the popularly elected mayor is the administrative and executive head of the city government and the council is the policy-making body. The mayor usually has extensive power to appoint and remove agency heads from office, to supervise and direct municipal operations and to prepare the budget. The mayor ordinarily has broad veto powers over council actions as well. This form sometimes also provides for a professional administrator appointed by the mayor and is then called the mayor-administrator plan.

In a weak mayor-council form of government, the mayor, even though popularly elected, is mainly a ceremonial figure. The council is not only the policy-making body, but also provides a committee form of administrative leadership and exercises the powers of appointment and removal of agency heads and budget preparation. There is generally no mayoral veto power, and committee chairmen tend to wield extensive powers.

The fourth category of city government is the commission form. Commissioners, elected to head and administer the individual departments of the city government together form a council that is the policy-making and law-making body. In some cases, one of the commissioners may be designated to perform the ceremonial duties of the mayor.

In recent decades, most cities selecting a new government have chosen either the council-

manager or strong mayor-council form. The commission and weak mayor-council plans find little favor as ways of dealing with contemporary municipal problems.

The commission form has had no new adoptions for many years in New York State or in the rest of the country, so far as can readily be determined; nor has the weak mayor-council form been chosen with any frequency. Moreover, unsatisfactory performance of the weak mayor-council plan in many cities is the stimulus for many charter revision movements today.

As between the strong mayor-council and council-manager plans, a charter commission will find many advantages in both. There is no question, however, about the trend toward these two plans, the basic characteristic of which is that they provide a more centralized administrative direction of city activities. The council-manager form nationally is found most frequently in younger cities of relatively homogeneous composition, with populations in the middle range (25,000 - 50,000). Very large and very small cities are more likely to use the mayor-council form, as are older cities with more heterogeneous populations made up of a variety of ethnic or economic population groups.

It is interesting to compare New York with all cities in the United States as regards the use of the major forms of government.

Forty-one of New York's 62 cities, or 66%, operate under the mayor-council system. Eighteen, or 29%, use a council-manager system, while only three or 4.8% employ a commission system. Nationwide, the percentages are — roughly — 54% mayor-council, 37% council-manager, 3% commission, and 7% "town meeting" (a system not in use in New York).

SOURCE: New York *Local Government Handbook* (4th Ed.); *ICMA Municipal Year*

Book (1990).

Obviously, the mayor-council form has greater relative popularity in New York than in the United States at large. This difference can probably be attributed to the diverse socioeconomic characteristics, as well as the age, of many New York cities. The commission form, once promoted as a tool of municipal reform, has lost much of its popularity over the years.

Issues of Structure and Powers

Most city governments have basically similar functions, duties and responsibilities. A basic similarity, therefore, exists among city charters with respect to the structures they provide and the ways in which powers and responsibilities are allocated. Within these basic likenesses, however, there are significant diversities of detail. These differences result not only from choices as to the form of city government, but also from differing local preferences, pressures and circumstances.

Among these differences, the most substantial are in the powers and functions of the executive and in the relationships the charter sets up between the executive and the legislative elements of the city government. There are also differences in the organization and structure of the administrative sector.

All such differences reflect options a charter commission faces, its choice depending in each case on its judgment of local needs and preferences. It is not possible in a manual of this size and purpose to array and discuss all such alternatives. It is useful, however, to identify the major areas concerning structure and powers with which a charter commission must deal, and to list component areas of decision within each major concern. This is the purpose of the following outline.

STRUCTURE AND POWERS OF CITY GOVERNMENT

- I. The Legislative Body
 - A. Is the council to have the broadest possible scope of powers consistent with New York State law and the philosophy of municipal government? If not, what powers are to be exercised elsewhere?
 - B. Council qualifications and compensation
 1. Member qualifications
 2. Prohibitions
 3. Vacancy and forfeiture of office
 4. Council to be the judge of the qualifications of its members
 5. Council compensation: to be set in charter or to be set by council in budget
 - C. Council representation and composition
 1. Number of members
 2. Terms of office: number of years; staggered or concurrent
 3. Nomination method
 4. Election method: wards, at large, combination (if wards, method of districting and apportionment)
 - D. Council organization and procedures
 1. The presiding officer: election by voters at large or chosen by council, duties (voting power)
 2. The council's secretary, selection and duties
 3. Time and place of regular meetings
 4. Method of calling special meetings
 5. Meeting procedures
 - a. Public meetings
 - b. Council to establish rules of procedure
 - c. Voting, quorum, binding action requirements
- II. The Executive Function
 - A. Strong mayor-council form
 1. Mayor's qualifications and

- compensation: set in charter or by council in budget
 - 2. Method of electing mayor: by voters or council
 - 3. Mayor's term of office: number of years and how related to terms of council members
 - 4. Vacancy and forfeiture of office
 - 5. Full-time or part-time
 - 6. Enumeration of mayor's authority and responsibility
 - a. Presiding officer of council
 - b. Law enforcement
 - c. Messages to council
 - d. Veto authority, council override
 - e. Item veto authority, council override
 - f. Administrative supervision
 - g. Appointing authority: department heads, boards and commissions, with or without consent of council
 - h. Preparing and submitting proposed budget
 - i. Other responsibilities
- B. Council-manager form
- 1. Manager's qualifications
 - 2. Method of appointing manager
 - 3. Council to fix manager's compensation
 - 4. Components of a removal procedure
 - 5. Provision for acting manager
 - 6. Specific authority and responsibility of the manager
 - a. Supervisory authority
 - b. Appointing authority
 - c. Budget preparation
 - d. Attend council meetings
 - e. Advise council
 - f. Other responsibilities
- C. Mayor-council-administrator: same as II-A above with the following added:
- 1. Method of appointment and qualifications of administrator
 - 2. Administrator's relationship to the mayor defined
 - 3. The authority and responsibility of the administrator
- 4. Administrator's authority, responsibility and compensation: to be specified in the charter or in administrative code
- III. Administrative organization: how much detail will be spelled out in charter? How much will be left for an administrative code?
- A. Departments: there must be administrative departments in every city government. May want to provide for key ones such as finance, law, public safety and public works. Less detail gives council flexibility to adapt organization to meet changing requirements. Generally preferable to provide for plans and proposals to originate with manager or mayor depending on form of government.
 - B. Boards, commissions and quasi-independent agencies: should they be retained? Which ones? To do what?
 - C. Administrative authority: are all administrative units to be integrated under authority of a chief administrator? If not, which ones are to be insulated from central control?
 - D. Appointive or elective: Thomas Reed says to elect an administrator "as nearly never as is politically practicable." He prefers appointment by and responsibility to the chief administrator, i.e., mayor or city manager.
- IV: Financial procedures: how much of the detail of financial procedures can be deferred to an administrative code?
- A. Municipal fiscal year
 - B. The office responsible for preparation of the budget and capital program
 - C. Components of the budget and the capital

program

- D. Budget and long-range program adoption procedures
- E. Procedures for amendment of the budget
- F. Appropriation lapse
- G. Provisions for budget implementation and administration
- H. Real property tax administration
- I. Nonproperty taxes
- V. Other Provisions
 - A. Conflict of interest for municipal officers and employees
 - B. Activities expressly prohibited for officers and employees
 - 1. Discrimination based on race, sex, age, political or religious affiliation
 - 2. Falsification of records, documents, tests
 - 3. Bribery
 - 4. Holding office in a political party
 - 5. Solicitation of political contributions
 - C. Separability of the charter provisions
 - D. Transitional provisions: are they to provide for:
 - 1. First election
 - 2. First council (initial staggering of terms)
 - 3. Mayor
 - 4. Continuance of officers, employees
 - 5. Initial salaries of officers
 - 6. Transition in departmental affairs, contracts
 - 7. Laws repealed or inconsistent
 - 8. Fiscal year

Issues That May — or May Not — Be Especially Troublesome

Charter commission members should be aware of some possible troublesome issues that frequently arise in city charter revision.

Among these issues, the distribution of authority between the mayor and the legislative body with respect to the exercise of the appointing power and the legislative role in budget development can be especially difficult in cities where an attempt is being made to move away from the weak mayor-council toward the strong mayor-council form of government. The power of appointment can rest with the mayor alone or with the mayor subject to approval by the common council. This authority may be parallel or be different for department heads and boards and commissions.

With respect to the legislative role, the question that arises most often is whether the mayor should have veto power over the council's actions and, if so, what majority must the council have to override the veto. In the context of the budgetary process, the key issues are: who prepares the budget, and whether the mayor can veto individual items in the proposed budget and, if so, should the item veto be limited to increases.

Another frequently raised issue is whether to retain independent or quasi-independent advisory boards and commissions. From a political point of view it is often advisable not to tamper with these bodies, if to do so may risk defeat of an entire charter revision. From an administrative point of view, however, they may tend to impede the ability of the chief administrative officer to manage effectively the affairs of the city, particularly if their members are elected and operate from an independent power base.

How long should terms of office be? This issue

must always be faced but may be especially troublesome in connection with the office of the mayor, as it relates to the terms of council members. It is said that the people have more control over government if officers are elected, say, every two years. On the other hand, the argument in favor of a longer term is that a newly elected official takes a year to learn about the government and his official role, but spends close to a year campaigning for reelection. This issue takes on added significance in the case of a mayor who is to be a strong chief executive.

A fourth issue that may cause heated discussion is the question of election or appointment of department heads. As in the case of boards and commissions, the administrative point of view favors appointed department heads. In fact, it is more essential for a chief administrator to have some control over appointment of department heads than over boards and commissions. Moreover, in many cases there is no justification for retaining elected department heads unless they are to exercise policy decision-making authority.

Election of the governing body can be yet another thorny issue charter commissions may face. The question is whether to elect council members by districts, or at-large, or by some combination. If a combination, how many should be elected at-large is the question. The greater the homogeneity in a city the more likely it will find at-large election satisfactory, whereas election by districts is more common in heterogeneous communities with a variety of ethnic groups and divergent interests identified with definable geographical areas.

CONCLUSION

A city charter is not a panacea for all local government problems, but it is an important tool for making better government possible. The goals of charter revision are in fact the same as those of better city government: better municipal service delivery and more efficient use of financial and human resources in carrying out the functions of government.

For these reasons, those who undertake to revise city charters will want to have as their objective the presentation of the best charter possible. This objective can be accomplished by following the advice in this manual: devise a work plan and timetable, engage in careful decision-making, and make public education and citizen involvement a top priority.

ENDNOTES

¹National Municipal League “A Guide for Charter Commissions,” New York, 1972.

²Municipal Home Rule Law, section 36(5); 37; 10(c)(1).

³Municipal Home Rule Law, section 10(1)(ii).

⁴Municipal Home Rule Law, section 10(4)(c) and 36(5).

⁵Municipal Home Rule Law, section 2(3).

⁶*Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705 (1929).

⁷*Wholesale Laundry Board of Trade v. City of New York*, 17 App. Div. 2d 327, 234 N.Y.S. 2d 862 (1962) aff’d 12 N.Y. 2d 998 (1963).

⁸Municipal Home Rule Law, section 20(5).

⁹Municipal Home Rule Law, section 23(2-a).

¹⁰Municipal Home Rule Law, section 36(5-b).

APPENDIX

Areas to be Covered in Department Head Interviews

1. Duties and responsibility of the department and its subunits.
2. Laws (local, state, federal): governing/affecting work of department; where legal authority comes from; mandates/controls by other units of government.
3. Organization and staffing: table of organization, number of employees, method of appointment of department heads. (Obtain copy of schedule of positions and salaries and an organization chart.)
4. Lines of authority/internal relationships: who reports to whom, supervisory responsibility; where to get help on money problems, policy direction, personnel, administrative matters, conflict resolution.
5. External relationships: with mayor, city manager, other departments of the city, the common council, committees of the common council, advisory boards and commissions, other governments; nature, purpose and frequency of relationships.
6. Budget: fiscal year, current budget figures, how needs are determined, who prepares
- request; revenues such as dues, fees, state or federal grants; performance budgeting or other formats: capital budgeting. (Obtain copy of current operating budget.)
7. Administrative procedures: written manual; reports to whom, how often, what kind; record keeping; formalized deadlines; purchasing, what items are needed.
8. Day-to-day operations: main services, program activities; how assignments are made to department heads and to staff; how things run on a day-to-day basis. (Obtain copy of annual report.)
9. Evaluation of operations: obtain frank estimates of strong and weak points including service delivery, financial, staff and external relationship considerations; barriers to needed improvements.
10. Changes: 5-10 year projection for increase/decrease in operations, services delivered by one agency or department which could better be delivered by another; general changes recommended.
11. Charter revision: specific suggestions or recommendations regarding charter revision.