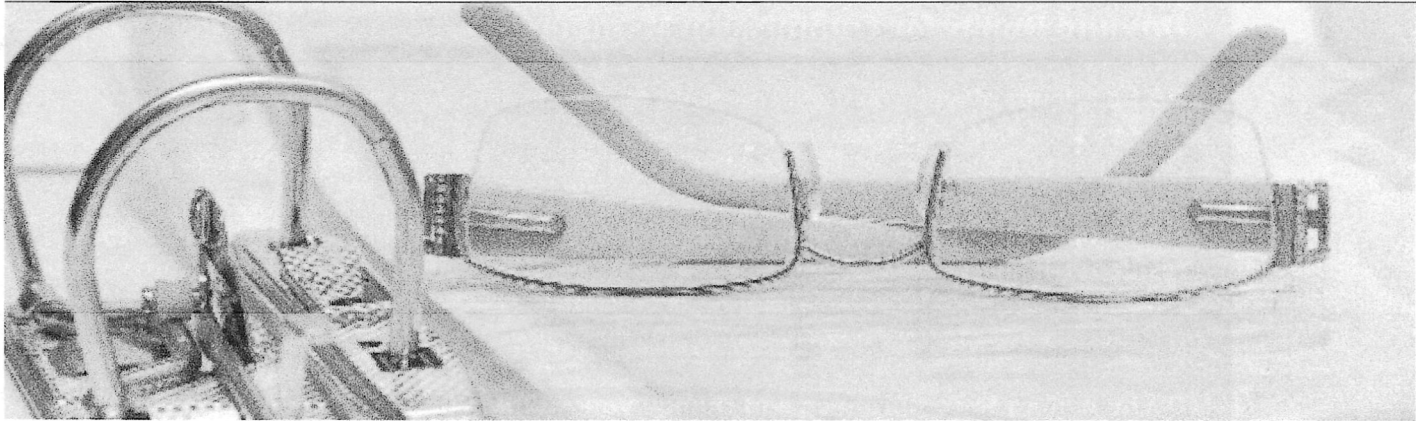


Chapter Three



The most practical way of keeping a charter to moderate bulk is to restrain the tendency common among charter commissions of trying to solve all municipal problems right in the charter. This is not the proper function of a charter, which is rather to establish a framework within which the city government, representing the people, can solve its problems as they arise.

— Thomas H. Reed, *Revising a City Charter*

The Charter Document

What Qualities Make a Good Charter?

A charter is not only used by attorneys. It is used by a cross-section of the community - elected officials, government employees, and everyday citizens. Therefore, the language used and writing style employed should be user-friendly and easily understood by an average citizen.

The better a charter is, the easier it will be for public leaders and officials to operate a proactive and successful local government. A good charter functions as a harmonizing, integrating, and controlling document. Therefore, the qualities of a good charter are worthy of consideration. Good local government charters are (1) straightforward; (2) consistent; (3) thorough, but not exhaustive; (4) flexible; and (5) focused on the fundamentals.

1. Straightforward. Simple and straightforward language facilitates comprehension. A good charter is easily understood by laymen as well as lawyers. The reality is that elected officials, government professionals, community leaders, and average citizens - none of which are legal experts - will be the main users because *they* are the ones that will implement the charter and refer to it when a question arises. Good charters are understood without a law dictionary. That said, including certain clauses or phrases that have been accepted by the courts as having a precise meaning may be necessary to ensure the charter will hold up in

the courts. Furthermore, much care should be taken in choosing the “right” words. The choice between words such as “shall” and “may” is an example of how exact wording is very important.

2. Consistent. Consistency throughout a charter is important on many levels. The writing style, verbiage, and content should be considered when looking at consistency. Comparable provisions should be handled similarly. Charter provisions of substance that do not harmonize with each other may lead to disunity, unhealthy bickering, and government paralysis. Inconsistencies not only breed confusion for the local government, but also can trigger future litigation.

In addition, a charter should be free of any internal structural contradictions or inconsistencies. For this reason, once a basic form of government is chosen, the charter commission should be wary of adding elements of other forms or eliminating features inherent to the chosen form. For example, the structure of the council-manager form can be completely undermined by provisions that permit the mayor to wield administrative powers exercised in the strong mayor form. While adopting widely accepted variations within a form can be workable, caution must be taken to avoid creating a system that is essentially at war with itself.

3. Thorough, but not Exhaustive. A good charter is comprehensive in terms of addressing all the necessities to facilitate an effective government. However, it should not attempt to be exhaustive by addressing every possible future scenario. There is a fine line in which the goal should be to include all necessary and essential components in a thorough, yet concise manner. Details should be avoided as much as possible. However, brevity at the expense of clarity can lead to confusion and litigation. A good rule of thumb is to express the intended meaning with the fewest and best words, whether it takes ten or one hundred. Generally, better charters are shorter charters. That said, the length is somewhat an outgrowth of state law and what broad areas need to be included. Detailed procedures should be established in administrative codes which are more easily updated and changed.

4. Flexible. Desires of citizens change over time. State and federal mandates on local governments are on the upswing. Residents demand new and expanded services. “Doing more with less” is a mantra often heard in local government. Those who make management and administration decisions are challenged every day to do just that. Officials must often use creativity and innovation to come up with new ways of doing things in order to free up time and resources to take on new programs or services. Providing local government leaders the flexibility to make changes is critical.

Good charters leave far more discretion to local government officials than charters of the distant past. Simply put, a charter should confer upon the elected officials and administrative staff broad powers to implement it and to promote the community’s welfare. In the interest of local self-government, the charter must free the hands of decision-makers rather than tying them.

5. Focused on the Fundamentals. Good charters set forth general principles rather than legislative details. A charter’s focus can be limited to the fundamentals when it is supplemented by an administrative (or municipal) code that addresses the details of the local government’s administration and procedures. An administrative code is simply a collection of ordinances that sets forth the particulars of how the broad statements in the charter will be implemented on a daily basis. When procedural details are handled in the code or elsewhere (such as a policy and procedures handbook, for example), the charter can focus exclusively on the most fundamental provisions aimed at protecting the citizens, the form of government, and the relationships between the elected officials and the administration.

Essential Components of a Charter

Local governments were not created by U.S. Constitution. Local governments are, in fact, creatures of the states. Therefore, they are regulated by the states and have only the powers and functions given to them by their respective state constitutions and legislatures. So, to discuss local governments in general terms is virtually impossible due to the different legal and political contexts represented by different states across the country.

However, an important court decision that is widely accepted as governing relationships between cities and states is known as "Dillon's Rule." Iowa Supreme Court Chief Justice John Forrest Dillon's view was that because cities are creations of the state, they have only the powers *specifically given to them* by the state constitution or legislature or included in a state-approved charter. If there is ever a question or "gray area" regarding the power of a local government to do something, the answer is always "no." In other words, if it is unclear whether or not a local government has the authority to take some action, the authority has not been granted. Chief Justice Dillon's viewpoint had significant impact on cities in the late 1800s because other courts and legislatures embraced the same perspective.

Because a growing number of local governments wanted more flexibility and discretion in decisions about issues that impacted them, a movement to counteract Dillon's Rule emerged. The concept of "home rule" supports the rights of cities to govern themselves. Supporters of home rule defend the right of municipalities to manage their own affairs without state interference or involvement.

Today, most states have provisions in their state constitutions or other legal instruments that allow some form of municipal home rule, allowing citizens to exercise expansive decision making powers through their municipalities. Local governments that operate under home rule have broad powers that include control over things *that the state legislatures have not specifically granted and those things not specifically prohibited*. Essentially, home rule frees a local government in many ways to take actions that those without home rule are not able to take. For this reason, many cities adopt home rule charters. It is important to note that the degree of home rule afforded local governments varies greatly by state and is often limited to specific classes of cities and counties, for example.

Unfortunately, not all states have home rule. Local governments in these states still operate with restricted powers. To a large degree, the power of cities located in states without home rule is limited to the specific powers granted to them by their state legislatures. For example, a city located in a non-home rule state that encounters a situation in which a certain authority has not been specifically granted by the state is required to get special legislation passed at the state level before it can take that action. On the other hand, cities with home rule are freed from the necessity of running to the state legislature every time the public welfare requires something new to be done or an old function to be performed in a new way.

A city in a home rule state should boldly include in its charter broad discretion over the scope of services it provides in order to take full advantage of the power available under the home rule provisions of its respective state. Doing so will provide the opportunity to undertake new policies or new methods to address issues that are not currently anticipated. Is there any real danger in this approach? The answer is no. In spite of broad powers that a far-reaching home rule charter might afford a municipality, there are several safeguards that will keep a city from venturing too far into uncharted territory:

1. Most city councils are highly conservative about undertaking new services or enacting novel or inappropriate regulations that may put the reputation of the city at risk.
2. Typically, city budget dollars are tight. Risky ventures that may impact the city coffers too severely are generally derailed before they get too far.
3. Periodic elections, vocal residents, citizen surveys, governmental audits, and watchdog groups keep municipal decision makers mindful of the consequences of their actions.
4. Regardless of charter provisions, legal restrictions still exist to limit some municipal activities and powers. Limits have set by the state constitution, state legislature, and the courts. The U.S. Constitution prevents any city, as an agent of the state, from depriving any person of life, liberty, or property without due process. The court system exists to test any possible abuse.

Because particular laws and circumstances vary from place to place, the essential components of a charter will be discussed in general terms. Detailed and sometimes complex arrangements exist among a local government and its public sector components, quasi-governmental entities, and associations. Setting local peculiarities aside, the essential provisions found in most charters can be organized into a few specific categories: powers of the city; city council; city manager (if applicable); departments, offices, and agencies; financial management; elections; general provisions; charter amendment; transition and severability.

1. Powers of the City. A starting point for many local government charters is to address and define the scope of powers of the local government. Within the context of specific state law, a local government should claim all powers it may legally exercise through its charter. Again, a city in a home rule state should include a statement that allows for broad discretion in order to take full advantage of the power available under home rule provisions set forth at the state level.

When writing a new charter or making revisions to an existing one, commission members need to remember that the rules established by charters do not exist in a vacuum in organizing, empowering, and regulating local governments. There is a "hierarchy of laws," so to speak. And while a charter which establishes various legal regulations is a part of that hierarchy, so are other laws. The federal constitution, federal laws, federal administrative regulations, state constitutions, state laws are also a part of this legal context. For example, general state legislation and special legislation take precedence over charter provisions in regulating the activities of a local government. Even a city that operates under constitutional home rule may have no power to change some of the statutory provisions of law that bind it.

2. City Council. A challenge for every local government is to attract able, talented, and willing elected leaders that represent the community well. The charter plays a role in this. Because there is not a special formula to make sure this will happen, local communities are left to come up with their own solutions. Many argue that concentrating council authority in a small, representative governing body is desirable because smaller legislative bodies are more effective than large councils. In addition, every member is essential in a smaller council and can be closely monitored by citizens and the media.

This charter section discusses various details regarding elected officials, including the mayor and city clerk. The goal is to prescribe a way for elected officials to be chosen that allows for fair representation and fits with local values. Specifically, the charter should address issues of residency requirements and whether or

not public officials are to be elected by district or at-large. Other issues such as powers and duties, eligibility, terms of office (number of years, staggered vs. concurrent), term limits, compensation (salary), prohibitions, vacancies, and ordinances are also included here.

City council members. Regardless of form of government, the council is the decision making body that sets the direction of the local government through local policies. The expansive power of council members includes control over the local government's finances (budgets, revenues, expenditures, and borrowing), property, priorities, goals, and legislation. These individuals are elected by the citizens to represent them and be accountable to them. Much is expected of a city council member. Serving one's community in this way is a high calling.

Every charter establishes the process for selecting council members. Specifically stating how public officials are elected is essential. Alternate approaches are discussed later in this chapter. The unique characteristics of each local government's population come into play here. Representation is key. The charter should allow for the election of a council that is truly representative of the entire community. While no specific design can guarantee effective, impartial, and equitable elected representation, the charter sets the stage for this to happen.

Mayor. A community's history, traditions, preferences, and experiences factor into the decision of how to handle the selection of the mayor. The way the mayor is elected impacts the dynamics among all local elected officials and the overall effectiveness of the mayor's office, among other things. Therefore, careful consideration should be given to this procedure set forth in the charter. Two commonly used methods in council-manager cities are when (1) the council chooses a mayor from among its membership; and (2) the mayor is elected at-large. (All voters directly elect the mayor.) Both are workable alternatives, although the second is now the predominant practice. A mayor elected at-large increases the likelihood of effective mayoral leadership. Candidates for at-large mayoral positions have the opportunity to discuss citywide issues, and the broad base of community support needed to win the office provides the winner with a mandate for action.

3. City Manager. For those cities operating under the council-manager form of government, the Model City Charter recommends a section addressing the appointment, qualifications, compensation, removal, and powers and duties of the city manager. It is important to note that deviation from the tried and true ways of successfully operating a council-manager city should be avoided. If basic standards and protections of council-manager government are laid aside, the form can be seriously undermined setting up the city for failure.

If a CAO is a part of a mayor-council city, a section in the charter should be designated to address this person's appointment, qualifications, compensation, removal, and powers and duties. As a source of professional advice, the CAO may function as a unifying force between the mayor and council. As stated earlier, the National Civic League in its latest *Model City Charter* recommends the CAO be either jointly selected by the mayor and the council or nominated by the mayor and approved by the council. This method encourages the CAO to be responsive to both the mayor and the council since both were involved in the hiring decision.

4. Departments, Offices, and Agencies. Every local government requires administrative departments to provide basic public services to its residents. Departments of a typical city include finance, human resources, parks and recreation, public works, library, water, sanitation, and public safety. These departments are responsible for conducting the business of the city and providing public services day after day.

How these departments are organized and how they function in the administrative hierarchy differs across the country - and even over time within a single community. Administrative shifts and reorganizations occur for a host of different reasons including taking advantage of organizational efficiencies, department head strengths, and personnel changes. Departmental reorganizations can vastly improve the inner workings of a local government saving the government and taxpayers money and improving customer service.

While most local government charters address governmental administration and departments to some extent, a charter should not identify a list of specific departments. Instead, it should simply state that the governing body may establish any office, department, or agency it deems necessary to carry out the functions of the local government. Consequently, the city council could approve changes such as combining or eliminating departments without changing the charter. While simple and general language is suggested, the latest edition of the Model City Charter recommends special attention be paid in the charter to the critical areas of personnel, law, planning, and financial management.

A charter commission should resist temptations to specify lines of accountability, add layers of complexity, or build in any extraneous features of supposed "safeguards." An example would be an independently elected department head. These additions are pitfalls for both efficiency and popular control. Instead, administrative departments should report to either the city manager (in the council-manager form) or the mayor (in the mayor-council form). In this way, the charter does not insulate any governmental function from popular control. The mayor is responsible to the voters for the administration's actions and is held accountable at the next election. The manager is responsible at all times to city residents through their council members who have the ability to dismiss the manager at will. These are essential features of each form of government. If the charter builds in any deviation from them, such as council confirmation of appointments made by the city manager or specified tenure for the manager, it will certainly reduce the chances of satisfactory operation of the government administration and weaken accountability. This means there is no room in either form of government for independently elected administrative personnel. Independent election of such officers undermines administrative responsibility and adds to the burden on and confusion of voters.

Furthermore, departments should not be headed by or responsible to boards or commissions. Boards and commissions, more or less autonomous and more or less independent of city government, are found in municipalities across the country. While citizen boards and commissions play valuable advisory roles for local governments, they should not play a role in actual administration, supervision, or policy execution. Departmental functions should be under the responsibility of a single individual (department head) who is held responsible and is accountable to the manager or mayor. Possible exceptions include the city clerk and judge who are typically appointed by the council.

So, where is the appropriate place for details of the organizational departments and functions to be enumerated? The answer is in the administrative (or municipal) code. And, the charter should mandate the city council to adopt one. An administrative code, adopted and amended by the council, governs the activities of the administration and sets forth the organization of the departments. Placing the administrative details in the code rather than in the charter allows for modifications without the burdensome and time consuming process of amending the charter.

The administrative code is, of course, subordinate to the charter. Specifically, subjects that should be detailed in the code rather than in the charter include the following: administrative/departmental organiza-

tion; accounting, expenditures, payroll; auditing; purchasing; bonding and borrowing procedures; franchises; eminent domain; special assessments; licensing and license revocation; nuisance abatement and planning and zoning.

It should be noted that flexibility is crucial to build into the administrative code as well so that it is easily maintained. The code, and the charter for that matter, should be silent on internal departmental workings allowing the manager or mayor latitude to make changes administratively without being hindered by council-mandated requirements or restrictions.

In sum, local government leaders *should* have the ability to make necessary or desirable changes to the administrative side of the organization. A good deal of leeway allows for quick responses to changing requirements and environmental factors. A charter that addresses administration in a simple and straightforward way and incorporates an appropriate level of flexibility sets the stage for an effective, efficient, and responsive government administration.

5. Financial Management. A well-run financial system is a critical component of a well-run local government. Because strong financial guidelines help to ensure the fiscal health of a local government, this section of the charter focuses exclusively on the finance function of the local government, particularly the budget. Flexibility and sound budgetary practices should be emphasized. Topics addressed in this section include fiscal year, budget submission, budget message, budgetary council action, appropriation and revenue ordinances, budget amendments, budgetary administration and oversight, the capital program, independent auditing, and public availability of budget-related records. In an era of public sector financial scandals and problems, charter writers should pay particular attention to this section. Clearly articulating sound fiscal practices in the charter is a key step along the path of financial health. The requirements set forth in this section of the charter, such as the independent audit, serve as a robust layer of protection for the finances of any local government.

6. Elections. A goal of every charter should be to establish democratic control so the local government is responsive to the will of the people. State election laws typically apply to municipalities, leaving local governments little if any control in these matters. However, there are a few important areas still under the control of local governments.

This section of the charter outlines various facets of the election process including election methods; when elections are held; partisan vs. nonpartisan elections; council districts and adjusting those districts; and initiative, referendum, and recall.

Election methods. The two common ways to elect council members are by **district** or **at-large**. A **mixed system** is one in which district and at-large elections are combined in some way.

District: District elections require a city to be divided in a number of geographical areas or districts. Each council member is chosen by the residents of a different district of the city. Candidate residency in the district is typically required. District elections have noteworthy benefits:

- They allow a minority group, particularly one living in a specific geographic area, to have a fair chance of being represented on the council.

- A council member elected by residents of a particular geographic area likely feels beholden to those living in the district. This often translates into a heightened sensitivity by the elected official to the concerns of those living in his or her district.
- Running a district campaign is less expensive than running a city-wide campaign. Therefore, district elections reduce the financial barrier for those seeking office as compared to running city-wide. As a result, the diversity and number of candidates could be strengthened with district elections.

On the other hand, governing bodies made up of individuals elected by district can have a difficult time agreeing on community-wide goals since council members are predisposed to focus on the problems of their district rather than the priorities of the city as a whole.

At-Large: In at-large elections, all candidates are placed on a ballot to be considered by all voters. Candidates in at-large elections occasionally run for specified seats on the council. Those candidates with the highest number of votes are elected to office. Public officials elected at-large represent the entire community. The at-large election system has noteworthy benefits as well.

- Unlike those elected by district, council members elected at-large theoretically are able to objectively view the priorities of the community as a whole and make impartial decisions based on the needs of all residents rather than on the priorities and desires of just one limited geographic area.
- If all council members are elected at-large, they all ideally embrace a holistic view of the community leading to a more unified and objective viewpoint as compared to a council composed of individuals elected from different districts with very different priorities.
- Residents can voice their concerns to any of a number of council members rather than just one. This is because residents are represented by all council members.

One possible negative effect of at-large elections is that it can dilute the ethnic or racial minority vote making it difficult for these groups to elect a representative to the council. Furthermore, at-large elections could result in the election of a number of council members who live in the same area of the city. This can raise questions regarding the fair distribution of public resources and the governing body's sensitivity to geographic areas where no elected officials reside. To address this particular concern, an outgrowth of the at-large system is the inclusion of a district residency requirement. In this scenario, council members are elected at-large, but not more than one council member can live in each district.

Mixed System: Some cities have chosen to use a mixed system in which some council members are elected by district and some are elected at-large. Since the Justice Department approved this hybrid as a system that complies with the Voting Rights Act, it has gained popularity. Supporters of this system argue that it combines the best attributes of both district and at-large systems. For example, it facilitates a city-wide perspective offered by at-large elections while incorporating the "personal connection" between local government and voters promoted by

geographically-based district elections. Problems can arise here as well when council members elected at-large believe their seats are superior to district council seats. To help combat this, all council seats should have the same duties and terms of office.

It is important to note that courts have had a lot to say in this matter. The one man-one vote court decisions and the passage of the federal Voting Rights Act have heightened both awareness of and concern about how local elections are structured. Across the country, many municipalities have been forced by the Justice Department to abandon at-large elections and replace them with district elections to increase the chance that representatives from minority groups serve on city councils.

Timing of Elections. If allowed by state election laws, the timing of local elections should be established in the charter. When a local election is held has certain implications. For example, if a local election occurs at the same time as a state and national election, voter turnout is generally high leading to more widespread participation by the electorate in local races. When elections are held at a time separate from state and national elections, local issues and candidates are the main focus and can be considered separately and apart from the broader political context. Both alternatives have positive and negative impacts. The National Civic League does not take a stand on either option. Legal advice, local preferences, and community dynamics should dictate the proper approach prescribed in the charter.

Nonpartisan vs. Partisan Elections. Political parties so prevalent and significant at the federal and state levels have little significance at the local level. It is unfortunate when local elections are decided solely on the basis of political party affiliation because of the limited importance of parties in municipal governance and because of the seed of division it plants before a single vote is cast on the council. Party primaries that nominate candidates from each party typically favor candidates who appeal to the most loyal "base" of voters within each party grouping. Primary voters are less likely to select moderates in each party and very unlikely to choose independents who are not affiliated with either party.

While nonpartisan elections do not eliminate the involvement or influence of political parties in local races, it can minimize the emphasis on politics by shifting the focus from Democrat vs. Republican to that of local issues. When deciding among candidates on a ballot without party labels, voters typically elect a mix of Democrats, Republicans, and Independents who must all work together on the council. For very practical reasons, national party strife should be put aside at the local level to focus on the concerns of the community.

The National Civic League supports nonpartisan elections as evidenced in the latest edition of the *Model City Charter*, and it is not alone. A number of states have formally recognized the benefits of this approach and have passed legislation requiring nonpartisan elections at the municipal level. Elections that use ballots without party designation help place local politics on its own and free local governments from domination by national, state, or county party organizations. Local governments that willingly choose this approach recognize that it is an important part of genuine home rule.

Council Districts. If the election of local officials is based on the existence of districts, the establishment of districts and process for re-districting is included in the charter. This section holds particular significance for political representation since re-drawing district boundaries is generally required after each U.S. Census based on population changes. The process, timing, and method (by districting commission or city council) are included in this section - not the actual district boundaries.

Initiative, Referendum, and Recall. If permitted by the state, these three procedures of direct democratic control over government give citizens a degree of confidence in their ultimate control of the city. Therefore, a charter should not dictate a severely high threshold for signatures required to initiate these measures. The commission should be sensitive to setting the required number of signatures at a reasonable level. If the charter sets an impossible standard, it will render these measures worthless. While they can be considered a “last ditch effort” to push an action through the legislative system, initiative and referendum are viable alternatives that should be available to residents and included in a charter if legally possible. If the local government is well-managed, responsive, ethical, efficient, and effective, use of these measures is kept to a minimum. Recall gives voters a chance to remove an elected official from office who is not meeting his or her responsibilities. The permissible grounds for recall, however, should be limited to misconduct or failure to perform the duties of the office, not disagreement with a decision the council member has made.

7. General Provisions. Good government is rooted in public trust. To a large degree, this requires government, as far as possible, to be responsive, open, and transparent. In today’s information age, transparency takes on a much different meaning than it did decades ago. Citizens have a high expectation for timely and accurate information to be available 24-7. Local governments should be proactive in making information available through all avenues possible. This moves beyond passing out copies of budget numbers at public meetings and issuing press releases on project updates. Citizens want and expect easy electronic access to considerable amounts of substantive public information.

The National Civic League’s *Model City Charter* includes a section titled “general provisions” which covers conflicts of interest, ethics, basic prohibitions, and campaign finance. A charter that emphasizes transparency and openness in these areas encourages public trust in local government and those working in it. Again in these matters, the charter should present the process for dealing with these issues in light of specific state laws or, alternatively, mandate that a process be adopted by the governing body via ordinance.

8. Charter Amendment. A charter should stand the test of time. However, from time to time charter revisions are necessary. While amending a charter should be possible, it should not be too easy. This helps ensure that successful charter amendments are both appropriate and necessary. For states that allow cities to adopt their own procedures for charter amendment, this section sets forth that procedure. Included here are regulations for the proposal of the amendment(s) and the subsequent election when voters approve or disapprove the proposed changes. Some charters include a provision here that requires a review of the charter every five or ten years, for example. Many cities have found the practice of mandated charter reviews to be a useful exercise. Any charter changes should, of course, require popular approval at a referendum.

9. Transition and Severability. Many charters do not address the possibility of a governmental transition from one form of government to another. However, charters that speak to this issue can be extremely helpful to those leading such a change by protecting a city from litigation, avoiding general uncertainty and confusion, and clarifying general city-related questions. While care should be taken to tailor this section to state law, the *Model City Charter* offers recommendations on how to handle existing employees, departments, and agencies; how to address pending legal and administrative matters; and the schedule for various upcoming meetings, deadlines, and elections.

Conclusion

One of the most interesting things about local government charters is that each one is a distinct reflection of its community. Because a charter is the document that allows citizens to determine their own structure of government within state-prescribed legal limits, a charter is, in many ways, a manifestation of a particular community's values. Each charter is built on a specific set of political and administrative choices that are determined by the values held by local residents.

The final product of this process should be a charter built on widespread community involvement and, ultimately, widespread agreement on how the local government should function to best serve its residents. However, the charter process can result in even more. The call to action that the charter process requires can awaken a community's sensitivity to the importance and responsibility of civic involvement. If conducted successfully, the charter review process can result in a rebirth of widespread civic-mindedness - a quality that unfortunately is rarely seen in communities in a tangible way.

In the end, it is the community's values that build, alter, or reaffirm the foundation of its local government. In vibrant communities, citizens continually seek out new ways to improve how they govern themselves guided by the constitutional principles incorporated in their city charter. Ongoing refinement of the charter as a tool for effective governance is what the charter review process is all about.

A more thorough discussion of all of these charter components is presented in the latest edition of the Model City Charter published by the National Civic League. Commission members are urged to refer to the Model City Charter for background information, further detail, and insightful commentary on all aspects of charter revision discussed here.