



EXPLORING CHARTER GOVERNMENT FOR YOUR CITY

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July 2019

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INTRODUCTION

The Arizona State Constitution in Article XIII grants specific authority for cities with a population of more than 3,500 to adopt a city charter. This provision recognizes the authority of locally-elected decision makers to make local decisions, and the ability of the level of government closest to the citizens to respond to specific needs in their communities. This report details the history of charter government for cities, the impact of the courts on charter powers, the types of options available with charter government and the step-by-step procedures involved in adopting a charter.

The topic of charter government in Arizona deals with a concept which dates back to the period before statehood. The concept then, as now, encompasses a basic principle of American federalism: local self-determination. Through the adoption of a charter, a local community can choose the specific structure of its representative government and the manner in which that government will respond to citizen needs.

In explaining charter government, a valid comparison can be made between a charter and the U.S. Constitution. Cities adopting charters are actually adopting “constitutions” setting out the basic governing procedures for their local government. This adoption process is similar to the one used by our founding fathers who met and created the constitutional basis of our national government. In adopting a city charter, a similar group of local “founding fathers” creates a form of local government, or to put it another way, these “founding fathers” determine their community's destiny.

There are two primary advantages of charter government. First, and foremost, a city charter strengthens the ability of a city to deal with local concerns without continually having to request the aid of the state Legislature. Second, and closely related to the first point, a charter allows a city to adopt the structure of government the community desires and not one prescribed by another level of government.

TYPES OF CHARTER AUTHORITY

There are two types of charter authority. First, there is legislative charter authority, started in Iowa in 1858, when the Iowa Legislature passed a state law giving municipalities the power to adopt their own charter. Secondly, there is constitutional charter authority, started in Missouri in about 1855, when the voters approved a section of the state Constitution so that cities of a certain size could adopt a charter. Arizona has constitutional charter authority. Article XIII, Section 2, of the Arizona Constitution authorizes cities with a population of more than 3,500 to adopt a charter. An advantage to such constitutional authority is that local determination is incorporated in the state Constitution and is thus less likely to be altered. Further, the state Legislature is limited to passing only “general laws” relating to a city; no “special laws” affecting a city may be passed. The distinction between “general” and “special” laws is better explained by examining the history of Arizona constitutional authority for charters.

ARIZONA'S CHARTER GOVERNMENT

Before Arizona was a state, and prior to 1886, cities were created by specific enactment of the Arizona Territorial Legislature. For example, a community wanting to become a city would go to the Territorial Legislature and request a special enactment making the community a city. In the enactment, the Legislature would spell out the specific powers of the particular city. This resulted in a lack of uniformity in local government as each city was accorded powers reflecting the philosophy of the Legislature at the time of enactment. This process continued until 1886, when Congress passed the Harrison Act. This prohibited territorial legislatures from making “special” enactments relating to cities. Cities, after the Harrison Act, could only be created under a “general law” of the Legislature. General laws gave all cities the same powers, thus assuring uniformity in the authority of cities.

When Arizona adopted its state Constitution in 1912, it borrowed a provision from the Oklahoma State Constitution, which paraphrased the Harrison Act. This provision prohibited the enactment of special laws relating to the incorporation and organization of cities. Arizona also borrowed another section from the Oklahoma State Constitution allowing cities to adopt a charter. The result was constitutional charter authority for Arizona cities.

PROCEDURES FOR ADOPTING A CHARTER

There are two ways to initiate the charter adoption process. The city council, at its discretion, may put the question of charter adoption before the people at an election, or local citizens may present a petition containing signatures equal to 25 percent of the voters who voted in the last city election and then the council must call an election on the question. The election will determine whether a charter will be proposed for adoption, and the election of 14 freeholders (founding fathers) who will draft the charter.

One unusual aspect of the election is the time frame involved and the resulting conflict created with the election requirements of the early voting laws of the state. Article XIII, Section 3 of the Arizona Constitution requires that the election to approve proceeding with drafting a charter be held not later than 30 days from the date on which the election is called. However, a key deadline in the early voting laws of the state is the requirement that the ballots be prepared and delivered to the election official at least 27 days prior to the election. There is a 1984 Arizona attorney general opinion (184-063), which concludes that absentee voting does not extend to the freeholder election portion of the charter process, because the statutory timeframe to deliver early ballots is incompatible with the freeholder election schedule mandated by the Constitution.

If the majority of the people vote in favor of adopting a charter, the board of freeholders is given 90 days to draft the charter. Once a draft is completed, it is submitted for review to the city council. The proposed charter is then published for 21 days in a daily newspaper or three consecutive weeks in a weekly newspaper having general circulation within the city limits. An election must be held not earlier than 20 days nor later than 30 days after the last publication date. If a majority of the people voting in the election vote in favor of adopting the charter, the charter becomes the organic law of the city, subject to the approval of the governor. The adopted charter is submitted to the governor, and if it is not in conflict with state law, the governor signs the charter and it becomes the “constitution” of the city.

THE COURTS AND CHARTER AUTHORITY

A recurring question about charter government relates to the actual powers it gives a city and the relation of these powers to the powers of the state. This is an area often dealt with by the judicial branch of the state government, and the courts' response provides an interpretation of the extent of charter powers.

That which is local is “undoubtedly” under the jurisdiction of the city charter; this is a basic principle of municipal law. For example, the municipal budget--what and how much a city includes in its budget--logically appears to be of local concern. However, the Arizona Supreme Court has determined that the municipal budget is also of statewide concern, meaning state budget law cannot be superseded by a city charter. The Arizona Supreme Court in a 2012 decision, ruled that the Legislature could not preempt a Tucson charter provision on how the city conducts its elections and how its elected officials are chosen. This decision thus preserves previous court holdings that elections are primarily of local concern and, consequently, can be controlled by the city charter.

Another election law mandate was passed by the Legislature in 2012 requiring all council elections to be held in the fall of even numbered years. The cities of Phoenix and Tucson sought to prevent enforcement of this law and the courts granted the cities' request for a permanent injunction. On appeal by the State, the Court of Appeals affirmed the injunction. The Supreme Court denied the petition for review, therefore the injunction remains in effect.

In another court case, the Homebuilders' Association brought suit against the city of Tempe questioning the city's authority to pass a development tax. The money raised from the tax was to be used for parks and recreational facilities within the city. The court held that Tempe, since it did not specifically provide for this tax in its city charter, could not assess the tax. This is a negative way of saying that if the tax were specifically provided for in the city's charter, perhaps it could have been assessed. Tempe has since amended its charter to specifically require developers to provide certain facilities or pay a fee in lieu thereof.

In 2016, *State ex rel. Brnovich v. City of Tucson*, a special action was filed pursuant to A.R.S. § 41-194.01 (S.B. 1487), which requires the Attorney General to investigate when a legislator files a complaint alleging that a city or town is violating the law. The Attorney General investigated the City of Tucson's firearm destruction policy and found that the city “may be” in violation of the law and pursued the special action under the procedures outlined in S.B. 1487. The Court found that a conflict exists between Tucson's code requiring the police department to destroy firearms and state law, which prohibits any political subdivision or law enforcement agency from facilitating the destruction of a firearm. The court held that firearm-related statutes implicate several matters of statewide concern because the state has broad police powers that encompass disposition of property, regulation of firearms, and preserving the right to bear arms under the federal and state constitutions. Therefore, since a conflict exists and the matter was a statewide interest, not a purely local concern, the state law displaces the city's charter authority in this matter.

As in this and other similar cases, the court has not followed a consistent pattern in its decisions, and apparently there is no way to anticipate what Arizona courts will do with questions regarding charter authority.

LONG AND SHORT FORM CHARTERS

A pertinent topic in any discussion of charter government is the distinction between the long form and the short form charter. In Arizona, this topic must include a reference to “pre-Glendale” and “post-Glendale” periods. Prior to Glendale adopting its charter in 1957, all charters with few exceptions, were “specific language charters.” The charters of the city of Phoenix and the city of Tucson for example, carefully outline the powers of the cities. The result is the long form charter, characterized by the specificity with which it defines city powers. These meticulous outlines were undoubtedly influenced by the specific legislative enactments used during territorial days. In 1957, the city of Glendale began to look at the possibility of adopting a city charter. At that time, Glendale's attorney and city manager both had previous experience with municipal government in the state of Oregon. The Oregon experience with charter government centered on the short form city charter which is characterized by brevity in outlining city powers.

The city of Tucson studied the possibility of city charter revisions a number of years ago and an interesting suggestion was proposed which provides a good example of the “ultimate” short form charter. The suggestion was made that a charter be adopted consisting of one sentence, “The people of the city of Tucson hereby grant all powers that are not preempted by the state Legislature and the Constitution to be vested in the City Council, and the City Council is empowered to enact laws to govern the city.” Reviewing Arizona court decisions relating to city charters, it is doubtful that a proposal as bold as Tucson's would be looked upon favorably. Contested city actions have tended to be supported by the courts only if the actions are specifically provided for in the city charter.

Due in part to these court decisions, charter cities have tended to adopt potpourri charters. This method begins with a basic framework of city government and then hangs on the “tinsel”-- everything that the court has specifically permitted the city to do under charter government. To this “tinsel framework” are added the “general” or “catch-all” powers found in short form city charters that allow a city more discretion in its actions. Perhaps this is not the most desirable procedure to use when drafting a charter, but given the realities of present court decisions, this may be the safest route.

ADVANTAGES IN ADOPTING A CHARTER

The advantages to adopting a charter are many, but perhaps the single most important one is that it allows a city to pause and evaluate, in depth, its present operations. On the basis of these evaluations, the city can create by charter the form of government that will best serve its particular needs. This is an important advantage, for no two cities are culturally, socially or structurally alike. The city charter can accommodate this individual uniqueness.

The question of how many members will sit on the city council is at the discretion of the community; there can be three, five, nine or 16 members--whatever the city wants. A charter city can set, the procedure for electing councilmembers. The city of Tucson, for example, has a unique provision to nominate council candidates by ward and then elect them at large. Several

of the charter cities have adopted term limits, which do not allow the mayor or the councilmembers to run for more than two consecutive terms.

The state Constitution and laws on budgeting still apply to charter cities; therefore, not much advantage exists from a budgeting perspective in the adoption of a charter. However, state law on investment of public funds specifically exempts charter cities. Several charter cities have amended their charters to allow for investment in a wide range of securities and other forms of deposit.

The fields of planning and zoning, subdivision regulation and floodplain zoning may be additional areas where city powers under a charter can be increased beyond the limitations in state law. The city of Scottsdale submitted a charter amendment to require developers operating within the city to provide services such as water production, sewage collection, park and recreation facilities or a fee in lieu of those services necessary to maintain the new development. A number of charter cities have since followed suit and have adopted amendments that allow the cities to require land or fees from developers for essential public services. Architectural, site and design review boards have been adopted by charter amendment by several cities seeking quality control over new developments. In addition, several cities have adopted property maintenance codes giving them additional authority in requiring clean up of both residential and commercial properties.

In the area of personnel, state law now permits charter cities to authorize agreements setting wages and salaries that may extend up to two years beyond the term of the contracting city council -- a helpful boost to authority in both budgeting and bargaining. The charters of Mesa and Chandler specifically prohibit the city from entering into collective bargaining contracts with their employees. On the other hand, the city of Tucson's charter provides for advisory arbitration of wage disputes. This is a vivid example of how a charter can accommodate different local needs.

Another advantage of a city charter relates to the municipal court system. Under state law, the city council appoints the city magistrate. The appointment power is received with mixed emotion by the legal profession, which claims that a court cannot render justice if directly appointed by the council. A city may avoid or at least blunt this criticism by providing in the charter for a commission to make recommendations to the council on the appointment of the magistrate. The charters of Bisbee and Casa Grande include this option. The council, based upon these recommendations, appoints a magistrate for a specified period of time. The city of Yuma's charter provides for the election of municipal judges.

Charters can also limit the actions of the local government. For instance, a charter can limit the city's taxing authority. The city of Tucson charter limits the property tax rate to \$1.75 per \$100 of assessed valuation. Tucson also adopted as a section of the charter, a 2 percent sales tax and exempted food items from the tax; a number of charters require voter approval to increase the local sales tax.

Fears of development of a city resource, the mountain preserve, prompted citizens of Phoenix to pass an initiative amending their charter to require voter approval for any sale or trade of the city-owned preserve land. The citizens of Tucson, by initiative, amended their charter to require

voter approval for the placement of freeways, any changes to parkways, controlled access highways and grade-separated interchanges. In both of these instances, citizens through the initiative process limited their city council's authority through their local charter.

Charters can also include different procedural requirements for the passage of specific ordinances. For example, a charter city may require a zoning ordinance to have a two-thirds vote for passage. Another charter requires an ordinance to be posted 96 hours before any action on the ordinance.

Obviously, from the above discussion, the main advantage of charter government is local flexibility. Providing the options needed to cope with the individual needs and demands of each community through maximum exercise of local determination is the heart of constitutional charter authority. The specific advantages set forth in the examples above may or may not be of interest to your community. They are merely provided to demonstrate the flexibility allowed by charter government and are by no means an exhaustive list of local options.

PROBLEMS IN THE ADOPTION OF A CITY CHARTER

Problems may also arise from city charter adoptions. For example, the city of Tempe had a provision on the adoption of ordinances that required a certain period of time to lapse before further action could be taken. This was a definite constraint on emergency power. The provision sounded good at the charter adoption phase, but caused administrative problems when the city needed to take immediate action. This provision has since been amended to allow for the adoption of emergency ordinances at one meeting.

Another problem that has arisen is confusion regarding the offices of mayor and vice mayor. The confusion centers on who is the acting mayor when the mayor is out of town? This question was not anticipated in many city charters and has caused some problems in the courts.

Other problems are procedural. For example, the city of Phoenix had a charter provision that provided an ordinance could not go into effect until it was published. Lawyers knew that Phoenix published its ordinances in the *Weekly Gazette* and all that had to be done to stop a law from becoming effective was to secure an injunction enjoining the publication of the ordinance. This provision was amended so the problem no longer exists, but the above examples indicate the importance of careful preparation and review of a charter.

Lastly, charter government is not for everyone--at least Arizona history would indicate this. Kingman voted to not develop a charter. Three cities--Bullhead City, Lake Havasu City, and Sierra Vista--have had voters go to the polls and reject a charter in the final vote. But, even in rejecting a charter, the citizens of a community benefit from the examination of their local government.

CONCLUSION

Charter governments have been a success in Arizona because most of the communities have done extensive and careful preliminary study before adopting a charter. As a result, to date, there has not been one single "charter" disaster. It's an amazing success story. The only major

problem to anticipate is the potential election of a majority of freeholders who are not committed to charter government. If this noncommittal attitude is compounded with the acquiescence of the people voting, then a city has real problems. Fortunately though, the history of Arizona charter commissions is filled with people who have been dedicated to better local government.

As an essential beginning to the charter adoption process, a city must pause and examine where it is now and speculate where it will be 10 years from now. It must also examine possible organizational problems in the existing city structure. A good starting point is a discussion with the city staff about any organizational and administrative problems the city is having under the present system to determine if adoption of a charter will help correct the problems.

In addition, most charter cities periodically establish a charter review committee to analyze the charter to determine if change is needed or not. Often, after careful review, no changes are recommended. The process, however, affords the citizens of the community an opportunity to study the past in anticipation of the future.

As a general statement, there are definite advantages in charter government, but it is up to the particular city to determine whether the advantages apply to its own situation. Where there is interest, there is generally good government. The contrary is also true. Charter governments are as good as the people who create and maintain them. There are added responsibilities to the citizenry within the community that adopts a charter, but if the responsibilities are met, a good government will be the result. If the responsibilities are shirked, a city can expect problems.

ADOPTING A CHARTER - A STEP BY STEP GUIDE

The following is a brief summary of the legal requirements for charter adoption.

PRECONDITIONS

- Must have achieved city status.
- Population of more than **3,500**.

INITIAL STEPS

- The council on its own initiative may call an election at any time.
- The mayor must call an election within 10 days if a petition containing the signatures of qualified electors is presented. The number of names on the petition must be equal to at least 25 percent of the total number of votes cast at the immediately preceding general municipal election.
- At the election, the voters will decide whether or not a charter should be prepared for the city and elect 14 people (freeholders) to write the charter.
- Remember, all election related materials must also be translated into Spanish and published as required.

DATE OF THE ELECTION

The election must be held not later than 30 days after it is called. The question of adopting a charter can be posed to the voters at either a special or general election. However, the constitutional election requirement of “not later than thirty days” does not allow sufficient time to comply with the absentee voting law of the state. In addition, if you use the county registration list for your local elections, you should keep in mind that the county may require more than a 30-day notice. You may be able to “schedule” the election with enough time to meet the other requirements and “call” the election in the 30-day time frame.

QUESTIONS ON BALLOT

The principal question on the ballot for the first election can be in several forms. The most common is:

Shall a charter be framed for the government of the City of
 ?

Election of a board of 14 freeholders to draft the charter. The names of all those who have qualified to run for the board are listed on the ballot.

THE BOARD OF FREEHOLDERS

- The only requirement for the board of freeholders is that the person must be a qualified elector of the city. The name “board of freeholders” would appear to limit those eligible to property owners in the city. However, court decisions on such limitations prohibit a city from limiting candidates to property owners. There is no specific procedure in state law for qualifying candidates for the board of freeholders. In some cases, those persons wishing to run for the board of freeholders have been asked to file nominating papers and nomination petitions bearing signatures of not less than 5 percent nor more than 10 percent of the highest vote cast for a city councilmember at the last preceding municipal election. This may be an effective way to limit the number of people running for the board of freeholders if there is widespread citizen interest.

If the city wishes to adopt another procedure for nomination of persons to the board of freeholders, it may do so.

- There is no statutory bar to members of the city council running for the board of freeholders. The post of “freeholder” is not a salaried position.

RESULTS OF THE ELECTION

To move forward, a majority of the qualified electors voting at the election must vote “yes” on the question of whether or not further proceedings should be made toward adopting a charter. The 14 people running for the board of freeholders who receive the highest number of votes compose the board.

PREPARING THE CHARTER

- State law specifies that within 90 days after the election the board of freeholders must prepare the charter.
- At least a majority of the members of the board of freeholders must sign the proposed charter and present one copy to the mayor and another to the county recorder.

PUBLICATION REQUIREMENTS

The charter must be published in the local newspaper for at least 21 days if in a daily paper, or in three consecutive issues if the paper is a weekly. State law also provides that the charter must be published within 20 days after its completion.

CHARTER ADOPTION ELECTION

- A general or special election must be held not earlier than 20 days nor later than 30 days after final publication of the charter.
- If a majority of the qualified electors of the city voting at the election approve the proposed charter, it must then be submitted to the governor for approval. State law specifies that the governor must approve the charter if it is not in conflict with the Constitution or laws of the State of Arizona.

- Once the governor has approved the charter, two copies of the charter certified by the mayor, with the seal of the city attached and a certified statement, again with a seal, indicating the outcome of the charter adoption election must be prepared. One of the copies must be filed in the Office of the Secretary of State and the other in the archives of the city after it has been recorded in the county recorder's office.

EFFECT OF CHARTER ON PREVIOUS ORDINANCES

All ordinances previously enacted that are in conflict with the newly adopted charter are automatically repealed or suspended.

The League of Arizona Cities and Towns is a voluntary, nonprofit, nonpartisan association of all the incorporated cities and towns of Arizona. The activities of the League are directed by an Executive Committee consisting of 25 mayors and councilmembers from across the state. In addition to serving as a voice for city and town elected and appointed officials on vital municipal issues, the League provides management assistance, ordinance and code assistance, an inquiry service, acts as a liaison to state agencies and provides publications on matters affecting Arizona's municipalities.