

LIMITATIONS ON LOCAL LAWS AND CHARTER ENACTMENTS

The authority of cities to enact local laws is subject to several limitations which also limit their authority to adopt and amend their charters. The constitutional grant of authority to cities for the adoption of local laws itself contains certain restrictions.

- **Inconsistent with any general law or the NYS Constitution** -- A local law cannot be inconsistent with a general state law or the New York State Constitution. For example, a local law may not supersede a state statute if the local law removes or raises limit on local government indebtedness or taxes raised in a fiscal year; removes restriction regarding issuance of bonds or other indebtedness; affects maintenance, support or administration of local educational system, or teachers' pension or retirement system; affects the courts; affects power of state comptroller regarding audits/exams of municipal accounts; or transfers to abutting property owners liability for failure to maintain sidewalks/gutters.
- **Matters of state concern** -- The scope of local law authority is restricted with respect to subjects which are determined to be areas of state concern. A matter of state concern affects the residents of the entire state rather than only the "property, affairs or government" of a particular locality. For example: taxation, transportation and highways, parks, incurring of indebtedness, water supply, education, social services, health, banking, rapid transit, civil service, housing and municipal boundaries.
- **Preemption** -- 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. Preemption occurs when state regulation in a particular area is so comprehensive as to indicate an intention to exclude local legislation. For example: sale of alcoholic beverages, campaign financing, penalties for the sale of drugs, local regulation of licensing of motor vehicle drivers or rules of the road.

CITY CHARTER VS. CITY ADMINISTRATIVE CODE

While both play a vital role in the overall operation and administration of city government, the charter should not be confused with the administrative code.

The charter, as previously discussed, is the document which delineates the legal boundaries of the city, defines its organization, powers, functions, and procedures. Generally, the charter is the place where you will find matters of a more permanent and historical nature, such as the composition of the city council, the various departments, and the procedure for assessment and collection of taxes. The charter is the basic framework of the city.

The code is the official collection or compendium of laws, rules, or regulations of the city consolidated and classified according to subject matter. The subject matter of the local laws found in the code - with certain restrictions as specified in the next section - can range all the way from regulating amusements to zoning. Generally, the code includes provisions implementing sections of the charter, as well as other general legislation. For example, while the charter may establish a sewer department, the code may contain provisions outlining sewer use and sewer rents. The code provisions tend to reflect the ongoing needs of the city and its residents and tend to be less permanent in nature than charter provisions. For example, a code provision might regulate vendors and solicitors. This provision could include a permit fee schedule which is amended from time to time.

COMMON FORMS OF CITY GOVERNMENT

Cities in New York State share few similarities. Each city has its own individual charter and the ability to revise it by local action. All cities have elected councils; elections are by wards, at large or a combination of the two. Most cities have mayors; some mayors are elected at-large by the voters, while others are selected by the council. Otherwise, city government in New York exhibits a variety of forms. There is no requirement that a city use any of these forms. In general, forms of city government fall into four broad categories:

- **Council - manager.** Under this form of city government a professional manager is the administrative head of the city, the council is the policy making body and the mayor, if the position exists, is mainly a ceremonial figure. The manager usually has the power to appoint and remove department heads and to prepare the budget, but does not have veto power over council actions.
- **Strong mayor - council.** Under this form of city government, the mayor is the chief executive and administrative head of the city and the council is the policy making body. The mayor usually has the power to appoint and remove agency heads, with or without council confirmation; to prepare the budget; and to exercise broad veto powers over council actions. This form sometimes includes a professional administrator appointed by the mayor and is then called the "mayor - administrator plan."
- **Weak mayor - council.** Under this form of city government, the mayor is not the chief executive head of the city. The council is not only the policy making body, it also provides a committee form of administrative leadership. It appoints and removes agency heads and prepares budgets. There is generally no mayoral veto power.
- **Commission.** Under this form of city government, commissioners are elected by the voters to administer the individual departments of the city government and together form the policy making body. In some cases one of the commissioners assumes the ceremonial duties of mayor, on a rotating basis.

THE ESSENTIAL ELEMENTS OF A CITY CHARTER

The city charter is a framework for the operation of a city. As a result, it should not attempt to provide a solution to every possible problem that can arise. Therefore, it is recommended that the charter contain a general grant of power to allow for flexibility.

For the newly elected official, the charter is the place to find the answers to most of the questions that he or she will be faced with upon taking office.

Legislative Body

- What is the legislative body and its members called?
- What powers does the legislative body have?
- Are there any powers which should be specifically denied to the legislative body?
- Are there any qualifications for members in addition to those required by the Public Officers Law?
- How many members will be on the legislative body and what will their term of office be? Staggered or concurrent?

- Will they be elected by wards or districts, at-large, or a combination of both? If by ward or district, how will the wards be apportioned?
- What happens if a vacancy occurs in office? Who appoints and for how long? What happens if an appointment is not made? Are there additional qualifications for office for an appointed member?
- Will there be any procedure provided for removal of a council member in addition to the procedure provided by the Public Officers Law? Will there be term limits?

Legislative Body Procedures

- Will there be a presiding officer of the legislative body and how will they be chosen? What is their voting power?
- Who prepares the agenda for meetings and how are items added to the agenda?
- Is there a time and place for regular meetings?
- Is there a procedure for calling special meetings? What can be done at a special meeting? Who is responsible for compliance with the Open Meetings Law?
- When is the legislative body required to use a local law, ordinance, or resolution? How are ordinances and resolutions adopted? Will there be a procedure for emergency adoption of ordinances or resolutions?
- What are the rules for voting (tie votes, abstentions), quorums, and other rules of procedure?

Office of the Mayor

- What are the qualifications for office and how will the mayor be elected? By the citizens or the legislative body? What is the term of office?
- Does the mayor have veto power? How is it exercised? Can the legislative body override the mayor's veto?
- What happens if the mayor takes no action within the allotted time? Does the veto power apply to all local laws, ordinances or resolutions of the legislative body? Or only to local laws?
- Will the mayor be a voting member of the legislative body and can the mayor participate in meetings? What is the mayor's relationship to the legislative body?
- Who takes over in the absence or disability of the mayor? For how long? What is their authority? Who decides when there has been an absence or disability?
- Is there an order of succession or is it a vacancy in office? How will a vacancy in this office be filled and will there be any procedure for removal?
- What are the powers of the mayor?

For Cities with a City Manager

- What are the manager's qualifications and the method of appointment or election? If appointed, will the manager be a public official or employee?
- What are the manager's responsibilities? What is the relationship between the manager and other elected officials?
- Is the manager required to be a resident of the city?
- Will there be a procedure for removing the manager and is an acting manager provided for? What authority does an acting manager have?

Administration

- How much detail about departments will be spelled out in the charter and how much will be in the administrative code?
- Will boards or commissions be established in the charter or the administrative code?
- Who supervises the administration? Are there any department heads which will not be under the authority of a chief elected, legislative body, or administrative officer?
- Who appoints all appointed public officials and employees? Are any elected?
- Will appointed individuals be public officers required to comply with the Public Officers Law and have a term of office or will they be employees?
- Who creates new departments, boards, or commissions? Do all departments, boards and commissions have to be created in the charter or can they be created in the code?
- Who has the authority to discipline or remove individuals in administration?

Budget Procedure

- What is the municipal fiscal year?
- Who is responsible for preparing the proposed budget and what should be in it?
- How is the budget adopted?
- Will anyone have veto or line item power over the budget and power to override a veto?
- What is the procedure for amendment of the budget?
- How is the budget implemented and administered?
- How are real property taxes administered and collected?
- What are the procedures for administering and collecting non-property tax revenue?

- What happens if a budget deadline is not met, not only the final adoption deadline, but any deadlines imposed throughout the process?

Miscellaneous

- Will ethical standards be outlined in the charter or provided by administrative code?
- If approved by the voters, when does the new charter take effect?
- When is the first election of officers held under the new charter?
- How will staggered terms be implemented?
- Will all appointed public officials continue in office during the transition and when will their term expire?
- How is the charter amended and how often is the charter reviewed?

MEETING PROCEDURES

RULES OF PROCEDURE

City councils and other public bodies should adopt local rules of meeting procedures. The Open Meetings Law is limited in its application to public meetings and does not address some very important topics. Most city charters contain some direction regarding the conduct of meetings such as voting power, designating a presiding officer, when regular meetings are scheduled and how special meetings are called, but these provisions too are likely to be inadequate.

General Construction Law § 41 requires the presence of a quorum of the legislative body to conduct public business. A quorum is a majority of the total legally authorized membership of the body, regardless of vacancies or absences. Although a quorum is required to conduct a meeting, a majority vote of the total legally authorized membership of the body is still required to pass most measures.

Beyond what is contained in state law and the city charter, the council may adopt further rules of procedure. By having written rules in place everyone involved knows what may or may not be done and much controversy can be avoided. Some cities have adopted *Roberts Rules of Order*, although they may be more cumbersome than what is necessary for municipal purposes.

Rules of procedure should at a minimum contain provisions on the following topics if not already provided for elsewhere:

- Regular meeting, when and where located, cancellation of;
- Special meetings, who can call them, when and how notice must be given to members;
- Agendas - who prepares them, who can change them and when;
- Voting power - including effect of an abstention;