

## ADVANTAGES AND DISADVANTAGES OF HOME RULE

When considering the adoption of a home rule charter, the citizens of each municipality must decide whether home rule would be beneficial, considering the municipality's own needs and problems. Municipal officials should consider or understand the possible advantages and disadvantages of home rule.

Home rule allows flexibility in the exercise of governmental powers. As discussed in the previous section, when a local problem arises, a statutory municipality can look only to the state statutes and a few constitutional provisions for its power or authority to act. If no power has been granted, the municipality must either ignore the problem or ask the state legislature to adopt a statute granting the necessary power. Home rule municipalities, on the other hand, can look both to the state statutes and to the specific and general grants of power found in Article XX of the Colorado Constitution. Thus, where no statutory authority to act exists, home rule municipalities may still have the power to solve their local problems and solve them quickly, without resorting to the state legislature.

If a statute does grant statutory municipalities the power to act, it may additionally require the municipalities to follow certain procedures and other limitations when acting. In other words, the state may control not only the question of whether the municipality has the power to act, but also the question of how that power should be exercised. On the other hand, in matters of local and municipal concern, home rule municipalities are not required to follow procedures outlined in the statutes and thus may shape solutions for local problems to fit local needs.

As an example of the flexibility of home rule power, the following is a partial list of actions that home rule municipalities can take but which statutory municipalities may not pursue or for which statutory authority is doubtful. A home rule municipality may:

- within certain limits, create new tax sources to meet local financial needs;<sup>57</sup>
- provide a method for the simple and expeditious transfer of funds among municipal departments;<sup>58</sup>
- establish its own maximum debt limitations or have no maximum limitation, as it desires;<sup>59</sup>
- establish its own time limitations for the repayment of municipal bonds;<sup>60</sup>
- create its own governmental form and administrative structure, including such matters as the size of its governing body; the powers of elected and appointed officials; terms of office of the members of its governing body and whether they are elected from districts or at-large; quorum and voting requirements; the manner of filling vacancies; the allocation of powers among elected and appointed officials, boards and commissions, and staff;<sup>61</sup>
- establish its own procedures for providing street, sidewalk, and other special improvements;<sup>62</sup>
- establish procedures and dates for municipal elections differing from those established by the statutes, including such matters as regular and special election dates, the dates when elected officials will take office, the creation of an election commission, the procedure for conducting elections, and who may vote in municipal elections;<sup>63</sup>
- establish procedures by which ordinances and resolutions may be adopted, including methods of adopting codes by reference; determining whether actions will be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication, or posting with regard to ordinances; and determination of the effective date of ordinances;<sup>64</sup>

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<sup>57</sup> *Deluxe Theatres, Inc. v. City of Englewood*, 596 P.2d 771 (Colo. 1979); *Sec. Life & Accident Co. v. Temple*, 492 P.2d 63 (Colo. 1972); *Farmers Mut. Auto Ins. Co. v. Temple*, 491 P.2d 1371 (Colo. 1971); *City & Cnty. of Denver v. Duffy Storage & Moving Co.*, 450 P.2d 339 (Colo. 1969); *Berman v. City & Cnty. of Denver*, 400 P.2d 434 (Colo. 1965); *City of Englewood v. Wright*, 364 P.2d 569 (Colo. 1961).

<sup>58</sup> *City & Cnty. of Denver v. Blue*, 500 P.2d 970 (Colo. 1961).

<sup>59</sup> COLO. CONST. art. XX, § 6(e). Note that the Constitution arguably requires a charter provision because it does not include the customary language, "or an ordinance adopted pursuant to the charter."

<sup>60</sup> *Davis v. City of Pueblo*, 406 P.2d 671 (Colo. 1965).

<sup>61</sup> COLO. CONST. art. XX, § 6; *Evert v. Quren*, 549 P.2d 791, 794 (Colo. 1976); C.R.S. § 31-1-102(2).

<sup>62</sup> COLO. CONST. art. XX, § 6(g); *Cnty. Comm'rs of El Paso Cnty. v. City of Colo. Springs*, 180 P. 301, 302 (Colo. 1919).

<sup>63</sup> *Kingsley v. City & Cnty. of Denver*, 247 P.2d 805 (Colo. 1952); *Cook v. City of Delta*, 64 P.2d 1257 (Colo. 1937); *Clough v. City of Colo. Springs*, 197 P. 896 (Colo. 1921); *Englewood Police Benefit Ass'n. v. City of Englewood*, 811 P.2d 464 (Colo. App. 1990); *May v. Town of Mountain Vill.*, 969 P.2d 790 (Colo. App. 1997).

<sup>64</sup> *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976); *Artes-Roy v. City of Aspen*, 856 P.2d 823 (Colo. App. 1993).

- establish procedures and requirements pertaining to regular and special meetings and executive sessions;<sup>65</sup>
- establish, within certain bounds, municipal court procedures;<sup>66</sup>
- establish, within limits, greater penalties and jail sentences for ordinance violations than those provided for by statute;<sup>67</sup>
- establish procedures for the sale or disposal of public property and the awarding of contracts;<sup>68</sup>
- have available broader powers of eminent domain outside municipal boundaries;<sup>69</sup>
- have available broader and more flexible taxing powers, including the ability to collect, administer, and enforce sales and use taxes and to determine what transactions are subject to or exempt from sales and use taxes; the ability to establish procedures for the adoption, amendment, increase, or decrease of taxes; the authority to levy taxes not available to statutory municipalities, such as lodgers taxes, admissions taxes, real estate transfer taxes, and other excise taxes; and the ability to provide property tax increase limits different from those provided for in the statutes;<sup>70</sup>
- have available broader and more flexible land use, zoning, and planning powers;<sup>71</sup>
- have greater authority over the qualifications of municipal officers and employees;<sup>72</sup> and
- assert legal standing to sue other local governments and to challenge state laws.<sup>73</sup>

The limits of home rule power have not been rigidly established since the municipality's power to act may depend in part on how the subject of legislation is classified, i.e., of local and municipal, statewide, or mixed concern.

Depending upon the particular viewpoint, this lack of definite limits on home rule power may constitute either an advantage or disadvantage of home rule. It may be a disadvantage in the sense that it creates some legal uncertainty when a home rule municipality legislates in a relatively new area. However, it may also be termed an advantage of home rule since the lack of rigid legal boundaries allows home rule municipalities to maintain flexibility when attempting to find new solutions to local problems.

In addition to providing flexibility in the exercise of governmental powers and increasing local control over local problems, home rule places decision-making in the hands of those officials who are closest to the people and makes those officials totally responsible for their decisions. The legislature cannot be blamed for a lack of authority to solve local problems, nor can it be blamed for limiting the choices of solutions to those problems. Thus, the citizens of a home rule municipality may find they have a greater voice and interest in the conduct of municipal affairs.

A home rule charter is legally viewed as a document of limitation; that is, the charter provisions are limitations on the powers granted by the Colorado Constitution to a home rule municipality. If a restrictive home rule charter is adopted, the flexibility offered by home rule may well be lost. It may be preferable to remain a statutory municipality than to be a home rule municipality with a restrictive charter that requires numerous votes of the citizens, establishes restrictive mill levy limits, itemizes the internal administrative organization of the government, contains severe bonding requirements, or intentionally or unintentionally limits the powers of the municipality. Thus, home rule may be either an advantage or disadvantage depending upon the nature of the charter.

One of the threshold problems faced by those municipalities considering the adoption of home rule is its cost. The Municipal Home Rule Act provides that the costs incurred in the process of adopting a home rule charter are to be paid by the

<sup>65</sup> *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986).

<sup>66</sup> C.R.S. § 13-10-103; *Artes-Roy v. City of Aspen*, 856 P.2d 823 (Colo. App. 1993).

<sup>67</sup> *City of Aurora v. Martin*, 507 P.2d 868 (Colo. 1965).

<sup>68</sup> *Save Cheyenne v. City of Colo. Springs*, 425 P.3d 1174 (Colo. App. 2018), cert. denied (2018).

<sup>69</sup> *Town of Telluride v. San Miguel Valley Corp.*, 785 P.3d 161, 172 (Colo. 2008); *City of Thornton v. Farmers Reservoir & Irrigation Co.*, 575 P.2d 382 (Colo. 1978); *City & Cnty. of Denver v. Bd. of Cnty. Comm'rs of Arapahoe Cnty.*, 156 P.2d 101 (Colo. 1945); *Town of Parker v. Norton*, 939 P.2d 535 (Colo. App. 1997). See Chapter V.

<sup>70</sup> See Chapter 2, Table of Areas of Local, Statewide, and Mixed Concern Determined by the Courts.

<sup>71</sup> See Chapter 2, Table of Areas of Local, Statewide, and Mixed Concern Determined by the Courts.

<sup>72</sup> COLO. CONST. art. XX, § 6(a); *Fraternal Ord. of Police v. City & Cnty. of Denver*, 926 P.2d 582 (Colo. 1996); *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Roybal v. City and Cnty. of Denver*, 436 P.3d 604 (Colo. App. 2019).

<sup>73</sup> *City of Greenwood Vill. v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427 (Colo. 2000); *City of Northglenn v. Board of Cnty. Comm'rs of Adams Cnty.*, 411 P.3d 1139 (Colo. App. 2016), cert. denied (2017).

municipality. Those costs may vary and may include attorney fees and other special consultant fees, expenses incurred in publishing notices of elections and publishing the final charter, services and general supplies for the charter commission, and the expenses of holding special elections. Other than special consultant fees, the highest costs to the municipality may be publication costs and the costs of holding special elections.

Finally, the adoption of a home rule charter does not ensure good local government. The quality of the municipal government will still depend upon the quality of the municipal officials and the degree of interest and concern shown by citizens in their government. Perhaps home rule can be seen as a means of placing the responsibility for the quality of municipal government more firmly in the hands of the municipality's own citizens and officials.