MML 2018
SUMMER CONFERENCE

STRUCTURE OF MUNICIPAL GOVERNMENT

Presented by:
Victor K. Terval, Esq.
and
Kevin J. Best, Esq.

June 10, 2018
Ocean City, Maryland

Tweet about this session at #MMLConference
COURSE OBJECTIVES

Upon completion of the Structure of Municipal Government, participants will be able to:

• Describe the relationship between the State and its local governments

• Understand the nature of municipal charters

• Understand the difference between your charter and your code of ordinances

• Describe the various forms of municipal government
STATE – LOCAL RELATIONS

• Can the State repeal a local ordinance lawfully enacted?

• Local governments are “creatures of the State.” They exist to serve State interests

• No inherent power to govern. The power to govern must be delegated from the State. In the absence of delegated power, the State controls all activities of a local government

• Article XI-E: authorizes the local passage of laws relating to a municipality’s incorporation, organization, government or affairs as long as they have a purely local effect
STATE – LOCAL RELATIONS

• Home Rule modifies the general principal that the State controls every activity of a local government

• 2 elements of home rule:
  (1) delegation of power to local governments to control certain activities locally; and
  (2) constraint on the General Assembly from interfering with the local control that has been delegated

• Yes – the State can repeal a local ordinance adopted under Home Rule. But because of Home Rule, only a public general law can rescind a local ordinance
MUNICIPAL ChARTERS – AND STATE CONSTITUTION

• Charter: your local constitution. Both establish the broad organizational framework by which a government operates.

• State Constitution – the people’s contract with the government. Where we the people tell the government what powers it has over us and how those powers can be used.

• Given that the Constitution is the people’s contract with the government, only the people – not the government - can establish and amend the State Constitution.

• The government must operate in full accord with the State Constitution or its actions can be voided by the courts.
Like the State Constitution a local charter establishes the basic components, organization and processes of a local government – fundamental rules under which it operates.

Don’t govern without knowing these rules. It’s your job to know them.

If you operate in disregard of the charter, a court of law may strike down all acts taken in violation of the charter.
MUNICIPAL CHARTERS – AMENDMENTS

- If you don’t like certain charter provisions, change them

- 2 ways to amend your charter (set by State law):
  (1) By resolution of governing body (top down); and
  (2) By resident petition followed by referendum (bottom up)

- How the charter is not like a constitution
Official acts of government are distributed in 2 documents: your charter and code of ordinances.

What’s the difference between the two documents? Can typical charter material be located in your town’s code of ordinance? Can legislation (i.e., an ordinance) be located in your charter?

No. A court can void an ordinance in a charter. The rights of your voters are injured by placing typical charter material in your Code...
The game of football as analogy

A football game is played using 2 books: the Rule Book where the NFL determines how the game is played and the Play Book where the coaches record their strategies for winning the game.

The Charter is like the Rule Book for how the game of government is played. The Municipal Code is like the Play Book where the strategies for winning the game are recorded.

You win the game of government by improving the lives of your residents.
CHARTER VS. CODE OF ORDINANCES

- The Charter establishes the mechanisms for running the government. But setting up the government machinery doesn’t improve the lives of residents. Something more is needed.

- You need to run the machinery.

- Running the machinery produces Acts of Governance; i.e., legislation, which is found in your municipal code.

- Municipal legislation = ordinances = the strategic acts taken by the government to improve the lives of residents and win the game.
MUNICIPAL CHARTERS
TYPICAL CHARTER MATERIAL

- Major components
  * Size of body, qualifications, term, duties
  * Mayor (if any), qualifications, term, duties
  * Administrator/Manager duties
  * Powers of government

- Major processes
  * Election process – frequency, by wards, at-large?
  * Legislative process
  * Budgeting process

- Major policies
  * Debt – can you acquire?
MUNICIPAL CHARTERS
OPTIONAL MATERIAL

- Administrative material:
  - Establishing departments, offices, boards, commissions
  - Establishing administrative processes (e.g., licensing procedures, collection and bill paying procedures, procurement processes)

- Often better to house administrative processes and organization in your Municipal Code rather than your Charter

- Easier to streamline administrative apparatus if its provisions are found in the Municipal Code
Your Municipal Code = Government Acts that make life better for residents

In law, whenever a government acts to improve the lives of residents, it is called “an exercise of police power”

In law, police power is a broader concept than the cop on the beat policing the neighborhood.

Police power is a legislative act that enhances the peace, good government, health, safety of welfare of the community. In other words, it is legislation that in some way makes life better for residents.
Police power at work - examples:

* Zoning

* Regulating the use of streets, alleys and sidewalks

* Establishing building standards

* Regulating behavior and personal conduct (e.g., noise levels, heights of shrubbery, weeds and grass, etc.)
Police power can only be exercised by a legislative body. It has not been delegated to your voters. Voters can’t make laws in Maryland, only a legislative body can make laws.

This fact means that the only people who can create and amend a Municipal Code are the members of a legislative body. Everything that is contained in a Code – that is, every exercise of police power - is beyond the reach of the voters.

These facts establish the rules for what a Charter can contain and for what a Municipal Code should not contain.
Not illegal for Charter material to appear in a Code, but it is viewed as an affront to our democratic principles.

Voters are unable to control fundamental elements of how they are governed when Charter material appears in a Code.

It is illegal for legislation to appear in a Charter.

When legislation appears in a Charter, it allows the voters to control the subject through the charter amendment process. This means voters can exercise police power (whenever they seek to amend and revise the provision) when that power by law can only be exercised by the legislative body.
Proper Charter Material – How can you tell?

Rule of thumb: most acts of government are legislative acts and therefore not proper charter material

Proper charter material never involves an exercise of police powers

Proper charter material **may** include administrative matters, but usually it is better to house administrative detail in the code of ordinances because it is easier to amend a code than a charter, generally
GOVERNMENTAL STRUCTURE IS THE CORE OF A MUNICIPAL CHARTER

(BASIC FORMS = COMMISSION, WEAK MAYOR, STRONG MAYOR, COUNCIL-MANAGER)

- Structure, & Roles of Officials,
- Who has executive/admin power,
- Provides Checks and Balances,
- Expresses Processes (Budget, Procurement, Elections, Ordinance Making, Recall...),
- Charter will not expressly name the form,
- Home rule powers allow structure changes accomplished locally.
WHAT EXECUTIVE POWERS CAN BE SHARED?... CHECKS AND BALANCES?

Who shares what: Mayor, the professional manager/administrator, and members of the governing body?

- Power to call a meeting and set the agenda (e.g., Mayor or 2+ Council),
- Responsible for day-to-day administration (#1),
- Veto/Veto override,
- Appointment authority (Dept. Heads/Subordinates/Committees),
- Terminations/“Serves at the pleasure of” the Mayor (& Council),
- Is the Office powers created by charter vs. ordinance vs. none? (Insulated from change/usurpation, Charter only subject to CAR/Referendum).
WHAT’S IN A NAME? ...DON’T BE FOOLED...THEY’RE ALL HYBRIDIZED!

Mayor, President, Burgess or Commission Chairman

Vice Mayor, Mayor Pro Tempore or Commission President

Administrator, Manager, Clerk or Clerk-Treasurer

Commission or Council
Voters Elect 1-Legislature

Commissioner supervises Public Works
Commissioner supervises Public Safety
Mayor or Commission Chair supervises Finance and Administration
Commissioner supervises Utilities
Commissioner supervises Leisure Services

5-Executives
**COMMISSION FORM OF GOVERNMENT**

- Most fundamental form,
- No Separation of Powers,
- Elected (at-large) Commissioners,
- Collectively, the Commissioners are legislators,
- Individually, the Commissioners are Directors of Administration (e.g. Police/PW/Fin. Commissioner);
- Each directs a different department or departments (May state this in Charter or not, often functions are delegated informally),
- Often the choice of smaller jurisdictions.
COMMISSION FORM OF GOVERNMENT

**Strengths:**
- Commissioners experience work directly (in the trenches).
- Typically 3 to 9 Commissioners so consensus by deliberation is needed (majority rules).
- Easy to describe the form.
- More democratic/Unlikely to have one person dominate agenda.
- Accountability to voters is more readily ascertained.

**Weaknesses:**
- Decisive leadership may not be one of its virtues/slow decision-making.
- No day-to-day management.
- Commissioners tend to micromanage as executives and neglect policymaking.
- Difficult to cope with conflicts among commissioners (all equals/self discipline).
- Coordination of administration difficult to accomplish (separate silos/fiefdoms).
- Elected officials put in positions they may be ill qualified to fill.
- Difficult to conduct intra- and inter-governmental relations.
"Weak" Mayor

- Voters
  - Elect
  - City Council
    - Mayor
      - appoints
        - Fire Chief
        - Public Works Director
        - Utilities Director
        - Parks and Recreation Director
        - City Clerk
        - City Attorney
        - Auditor

Council concurrence required for appointment of heads
Mayor and Council share the primary policymaking and executive roles.

Mayor is not usually elected by the voters, but by Council.

The elected officials perform both executive and legislative roles collegially.

The “weak” mayor’s role is primarily ceremonial, with the “weak” mayor possessing few, if any, of the executive powers.

Mayor typically has limited authority to appoint/terminate department heads, subject to confirmation by the Council.

Mayor may not possess the authority to terminate department heads.
WEAK MAYOR-COUNCIL FORM

(Generally the same S’s & W’s as Commission form.)

Strengths Unlikely to have one person dominate agenda.
- Keeps control out of the hands of any single person, so that a corrupt or incompetent individual could do little harm to the municipality.
- Consensus is made by deliberation.

Weaknesses
- Role of the mayor often is misunderstood, which can lead to confusion about the proper role of other elected and appointed officials.
- Mayor has no independent power.
- Mayor has no strong allegiance from Dept. Heads.
- No decisive control or day-to-day management.
Distinct separation of powers like the Federal and State Governments (Council serves as check & balance),
Mayor serves as the chief executive officer and has full responsibility for daily operations,
Council plays the primary policy role at arms length while Mayor assumes the primary executive role,
The Mayor is typically not a member of governing body,
Council is responsible for enacting the city’s policies through the budget, ordinances and/or resolutions,
Mayor is charged with executing those laws and policies.
Mayor may veto legislation passed by the council, & the council may override the veto,
Mayor has sole power to hire and fire department heads and other city staff,
Authority to appoint committees, and members to city boards and commissions,
Mayor prepares and administer the city’s budget (oversight), and negotiates contracts,
Mayor may appoint a professional administrator (CAO) to assist in carrying out the daily operations.
STRONG MAYOR-COUNCIL FORM

Strengths
- Distinct division of labor (Exec/Leg.) provides the best opportunity for independence, debate and consensus building.
- By electing, rather than appointing a mayor, more political leadership and accountability is established.
- City has a political spokesperson with a high degree of visibility and standing.
- The vested veto power is a powerful check on an unpopular council decision.
- A skilled administrator can be hired to minimize weaknesses in the mayor's management/inexperience.
- Elected CEO can mobilize electoral support, and highlight issues during campaigns.

Weakness
- Mayor can be popular & politically astute but ineffective; may not have strong managerial or admin. background.
- If Mayor proves to be incompetent or worse, he/she cannot be removed until end of term, or after an expensive and divisive recall election.
- Separately elected Mayor may resist requests from the council;
- Mayor may attempt to dominate agenda and isolate the council by controlling staff, information, and reports.
- Mayor may choose not to deal with unpopular issues that could thwart political ambition.
- Elected Council Members or Commissioners,
- Often by at Large Elections,
- Distinct separation of Powers,
- Commission/Council appoints a chief executive,
- City Manager (CM) serves at governing body’s pleasure,
- CM has sole administrative authority and administers the budget.
COUNCIL – MANAGER FORM OF GOVERNMENT

Strengths

- Empowers Council as the “People’s Representatives.”
- Chief Executive is an educated and experienced professional.
- Accountability of the City Manager for how administration is conducted.
- Administration of city business is removed from politics.
- Efficiency of professional management is based on a business model.
- CM appointed and greater attention can be given to selecting a well qualified manager.
- The pool of qualified candidates is larger since CM’s traditionally are paid better than mayors; candidates can be recruited from outside the city-nationwide search. (Mayors must be a resident of the city.)
- Council gets better cooperation and information from appointed executive because the CM is their employee.
- Since CM serves at the pleasure of the council without a definite term, he/she can be removed at any time, limiting the danger of an abuse of authority.
Weaknesses

- Too much power and decisions left to one person; the city manager (CM) is not accountable.
- A professional manager, chosen from outside the city, does not know the community.
- Leaves too much decision making to the manager, not directly accountable to public.
- Without an elected chief executive, the community lacks political leadership.
- Too much like a business which is not suitable for managing community needs.
- CM’s cost too much, local people could handle the job for less cost.
- Public confusion about who is in charge/Expectation that Mayor responds to problems.
- Mayor has no direct control over the service delivery.
- CM may leave for higher salaries and greater responsibilities elsewhere.
MANAGER VS. STRONG MAYOR?
HYBRID FORMS OF GOVERNMENT

Elected Legislature - Council or Commission elected at-large or from wards with Weak Mayor chosen by voters instead of the governing body.

Mayor may preside over Council, & votes (in case of tie) while having the veto power.

May have a Strong Mayor who retains most executive authority except the veto or power to terminate.

Strong Chief Administrative Officer’s powers competes with Strong Mayor.

Varying degrees of Separation of Powers and Checks & Balances
REFORM: WHY CHANGE FORM OF GOV.'T?

Dissatisfaction in working relationships by members of the governing body/Personality Conflicts.

Mayor is unresponsive to members of the governing body.

Elected officials are unable to reach consensus.

Realign responsibilities, reduce stress, cure abuses and relieve the tensions undermining performance.

The goal of change is to improve the efficiency and effectiveness of decision-making and of the government generally.

By Charter Amendment.
Lessons Learned – Commission By Name Is Actually Strong

President (CEO) day-to-day, and Treasurer.

Treasurer may be an elected commissioner or an appointee.

All officers are appointed and serve at President’s pleasure.

Three (3) member Commission is solely a legislative body.
LESSONS LEARNED – STRONGER WEAK MAYOR/COUNCIL TO WEAKER-MAYOR/COUNCIL FORM

- Mayor elected at large, presiding officer, member of council, no veto.
- Appointment of and dismissal of appointed officials and subordinate employees (Clerk, Treasurer, City Attorney etc. served at pleasure of the Mayor).
- With each new elected Mayor there was jeopardy of loss of experienced staff along with a critical loss of corporate knowledge.
- Change from Mayor alone appointing and dismissing; to Mayor with the consent of Council for both appointing and dismissing.
- Change from at-will to merit employment of all but PT.
- Suspension of officials provision for violating charter added.
LESSONS LEARNED: COMMISSION TO COMMISSION-MANAGER FORM

- Five Commissioners; informally each as dept. liaison.
- Certain enumerated powers delegated to clerk-treasurer and commissioner-chair.
- Prior to Charter Amendment Resolution (CAR), executive power vested in Commission as a whole,
- Charter retained “Commission” name but changed to Council-Manager Form
- Prior to CAR, there was a clerk-treasurer but some duties subsumed by Town Manager and rest assigned to newly created Treasurer.
WRAP UP

• The municipal charter establishes the rules and the basic building blocks of your government. You can change your charter, but you must always follow it.

• Don’t legislate in a charter.

• No form of government is ideal; all forms have strengths and weaknesses. Expect interest in changing the form of government to coincide with how divided an elected body may be.