STRUCTURE OF MUNICIPAL GOVERNMENT

Academy Core Class

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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
“The Great Problem of legislation is . . . to organize the civil government of a community.”
• Municipalities are “creatures of the State.” They exist to serve State interests in addressing local issues.

• Municipalities have no inherent power to govern. The power to govern is delegated from the State. In the absence of delegated power, the State controls all activities at the local level.

• Maryland Constitution, Article XI-E authorizes a municipality to pass laws relating to its incorporation, organization, government, and affairs, so long as they have a purely local effect.
• Home Rule modifies the general principal that the State controls every activity of a local government.

• Two elements of Home Rule:
  (1) delegation of power to Municipality to control certain activities locally; and
  (2) constraint on the General Assembly from interfering with the local control that has been delegated.

• The State has the authority to repeal a local ordinance adopted under Home Rule. But because of Home Rule, only a public general law can rescind a local ordinance.
• State Constitution is organic law. It embodies both the State’s source of power and its organizational framework.

• The State Constitution is the people’s contract with the government in the sense that the people tell the government what powers it has over us and how those powers can be used.

• Only the people - not the government - can establish and amend the State Constitution.
Two documents contain a municipality’s organizational framework and official legislative acts:

- the charter, and
- the code of ordinances.

What is the difference between the two documents? Can typical charter material be located in a municipality’s code of ordinances? Can legislation (i.e., an ordinance) be located in a charter?
• The Charter establishes the structure for the operation of the municipal government.

• Establishing the structure of government without a method to implement its authority is meaningless.

• Municipal legislation is how the power of the municipal government is implemented.

• Municipal legislation = ordinances.
In one sense, a municipality's charter is like a local constitution.

Like the State Constitution a local charter establishes the basic components, organization and processes of a municipality, including the fundamental rules under which it operates.

Unlike the State Constitution, the local government’s power embodied in the Charter does not come directly from the people. It comes from the State.
MUNICIPAL CHARTERS
TYPICAL CHARTER MATERIAL

• Major components
  • Size of elected 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 the Code rather than the Charter.

• It is easier to change the administrative apparatus if its provisions are found in the Code.
• If certain charter provisions are problematic, change them only after careful consideration of (1) intended consequences and (2) unintended consequences.

• Two 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).
• The “police power” is a more expansive concept than law enforcement.

• The “police power” is a legislative act that enhances the peace, good government, health, safety, and welfare of the community. In other words, it is legislation that in some way addresses issues local issues falling under that umbrella.

• A legislative action by the elected body to address a community issue is often referred to as “an exercise of police power.”
• A municipal code is a collection of that municipality’s legislative exercise of the police power, in the form of enacted ordinances.

• Police power at work – examples include:
  • 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, and cannot be, delegated to voters. Voters cannot make laws in Maryland, only a legislative body can make laws.

• Only the elected legislative body can create and amend a Municipal Code. Everything that is contained in a Code, that is, every exercise of police power, is beyond the reach of the voters (unlike a Charter).
• Improper for Charter material to appear in the Code.

  • Voters are deprived of the ability to control fundamental elements of how they are governed when Charter material appears in a Code.

• It is unlawful for legislation (power granted to a legislative body only) to appear in a Charter because it allows the voters to control the subject through the charter amendment process. In other words, voters can exercise police power by seeking to amend and revise the provision.
• Proper charter material – How can you tell?

• Proper charter material relates to the broad organizational framework establishing the form and structure of the local government.

• 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.
• The municipal government must operate in full accord with the State Constitution and State law or its actions can be voided by the courts.

• If a municipality operates in disregard of its charter or code, a court of law may strike down all acts taken in violation of the charter or code.

• Do not govern without knowing these rules. It’s your job to know them.
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.
Who shares what: Mayor, the professional manager/administrator, and members of the governing body?

- Responsible for day-to-day administration (#1),
- Power to call a meeting and set the agenda (e.g., Mayor or 2+ Council),
- Veto/Veto override or member of gov. body,
- Appointment authority (Dept. Heads/Subordinates/Committees),
- Terminations/“Serves at the pleasure of” the Mayor (& Council),
- Are the Office powers created by charter vs. ordinance vs. none? (Insulated from change/usurpation, Charter only subject to CAR/Referendum). A charter delegated power supersedes the Mayor and/or Governing Body’s power or usurpation.
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
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

Mayor

City Council

appoints

Fire Chief

Public Works Director

Utilities Director

Parks and Recreation Director

City Clerk

City Attorney

Auditor

Council concurrence required for appointment of heads
Weak Mayor-Council Form

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 incompetence 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.
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.
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.
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 at the time.