



## MEMORANDUM

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Date: August 21, 2012 – 8:30 work session  
To: Mayor Stephens and City Council  
From: Dara MacDonald  
RE: General items

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We have a number of items for discussion during the work session. In light of the lengthy list, I am providing this memo highlighting items I will be bringing to Council's attention on Tuesday morning.

- |  |                                       |
|--|---------------------------------------|
| I. Review agenda for 6:00 pm regular meeting | VI. Colorado – Remembering our Fallen |
| II. Tenderfoot Mt tower                      | VII. Mini-excavator                   |
| III. Ice skating in Centennial Park          | VIII. Recycling – Angel of Shavano    |
| IV. Home Rule exploratory committee          | IX. Pool inflow – 120 degrees         |
| V. Downtown parking lots                     | X. Council Retreat                    |
|  | XI. Upcoming meetings                 |

### **I. Review agenda for 6:00 pm regular meeting**

### **II. Tenderfoot Tower**

Jan and I met last week with Wendell Pryor and Susan Jesuroga from the CCEDC along with Brian Wagner the EDC's consultant on broadband. It does seem feasible for the City to pursue construction of a new tower on Tenderfoot to accommodate additional internet providers. Attached is a memo prepared by Brian Wagner outlining some of the issues and potential concerns.

Evaluation by a frequency engineer will be necessary in order to determine what height is needed to accommodate up to four users on the tower. The cost estimate for those initial services is \$1,000 - \$1,200. With Council's consent staff will pursue that service. Once we have determined the possible height of the tower we can evaluate the visual impacts. In addition to the tower itself, a small bunker type building would be constructed to house equipment for each provider. If Council remains interested in constructing a new tower, we could likely bring a more complete picture of cost and visual impact to the next Council meeting on September 4<sup>th</sup>.

### **III. Ice Skating in Centennial Park**

Gregg Follet is planning to attend the work session to discuss the possibility of flooding the tennis courts at Centennial Park this winter for ice skating.

### **IV. Home Rule exploratory committee**

See the attached memo from Deputy City Clerk Audrey Gilpin outlining a path to move forward on Home Rule.

#### **V. Downtown Parking**

The Union Pacific informed me on Thursday that they have revoked their offer to lease land to the City for parking. I have drafted the attached letter. If Council is so inclined we can mail the letter to the Union Pacific and all of those cc'ed. I emailed the draft letter to Ms. De Stigter on Friday afternoon asking if they were inclined to change their position prior to my mailing the letter. Suggestions on content and composition are also welcome.

#### **VI. Colorado – Remembering our fallen**

The Mayor received the following email regarding a traveling exhibit honoring fallen troops who were serving in Iraq and Afghanistan. If the Council is inclined we can pursue displaying the exhibit. There is a cost of \$800 to host the exhibit.

**From:** Patriotic Productions <[info@patrioticproductions.org](mailto:info@patrioticproductions.org)>  
**Date:** August 13, 2012 8:58:51 AM MDT  
**Subject:** Remembering Our Fallen from Colorado

The Colorado Remembering Our Fallen exhibit is the pictures of the fallen from the state in Iraq and Afghanistan. It was unveiled last October at the Aurora Municipal Center for the Gold Star families and has been on a tour of the state since.

My wife and I are from Omaha and created the exhibit. We also have exhibits for Nebraska, Iowa, Missouri, Arizona, North Dakota, Kansas and Wisconsin. Working on Oklahoma and Texas.

We loaned the exhibit to a Colorado non-profit, [www.veteranspassport2hope.org](http://www.veteranspassport2hope.org), a group supporting veterans. Bob Kirton, A Gold Star father who's son is pictured on the exhibit, is doing the delivery and set-up of the exhibit.

The fee to host the exhibit is \$800, no contract or deposit. The exhibit is paid for, but the fee is for the upkeep, pay the expenses of traveling the state, and to benefit Veterans Passport Two Hope. Usually, the exhibit is displayed in the courthouse, city hall, library, hospital lobby, VFW/Legion Hall, or a business, many times a bank lobby. Requires 40 linear feet, must be indoors.

Our website is [www.rememberingourfallen.org](http://www.rememberingourfallen.org). The tour schedule is there and five minute videos under testimonial showing family members viewing an exhibit for the first time. If interested in booking the exhibit for your community or business, Bob's email is [gng4the1@msn.com](mailto:gng4the1@msn.com). Cell number is [720-220-6961](tel:720-220-6961).

Our mission is for these men and women to not be forgotten. We hope you will consider bringing the exhibit to your community.

Bill and Evonne Williams  
[402-612-0210](tel:402-612-0210)  
[www.patrioticproductions.org](http://www.patrioticproductions.org)

#### **VII. Asset sale and Mini-excavator**

The City is planning an asset sale in early October. There are two police cars going out of service and department heads are identifying any additional assets that are ready for disposition. Items will be sold through a sealed bid process.

One item that has been identified is the mini-excavator that was purchased in 2009 at a cost of \$20,000. Staff believes we may be able to recoup in excess of \$10,000 for this item. We have confirmed with Salida Mountain Trails that they do not think they will need the equipment going forward. In the meantime, I authorized lease of the mini-excavator to Tony Boone Trails for use over the next month for \$2,000.

#### **VIII. Recycling – Angel of Shavano**

Angel of Shavano is scheduled to take over recycling at the site behind the pool at the end of the month. The UAACOG has agreed to release the City without the full 90-day transition period. On August 28<sup>th</sup> Angel of Shavano will be bringing in new containers to replace the current glass, metal and newspaper collection containers. All UAACOG containers will be removed by August 31<sup>st</sup>.

The City actually owns 15 of the existing containers. Mickey from Angel of Shavano is exploring the recycling market to see if there might be any interested buyers for the specialized containers. Unfortunately they are only used by a few providers as they require a special truck that is equipped to empty them.

Overall there will be a reduction in the number of containers at the site as the containers will be larger and will have more frequent pick-ups. For now the containers will remain in generally the same area while we evaluate the new patterns and determine what direction the City is heading with the Centennial Park master plan.

**IX. Pool in-flow**

Water has been arriving at the pool this week at 120 degrees. Theresa has not found records showing this high of a temperature in the past.

**X. Council Retreat**

The Council retreat is scheduled from 9:00 am – 4:00 pm at the Monarch Mountain Lodge in Monarch, CO. Lunch will be provided for Council and staff. The morning will include revisiting the vision and goals for the City, identifying priorities and discussion with department heads. Following lunch, Council will further refine priorities. Information from the retreat will be used to draft the budget for 2013 and help departments form priorities and work plans for the coming year.

**XI. Upcoming meetings**

August 24<sup>th</sup>, 9:00 am - 4:00 pm - City Council Retreat to discuss vision, goals and priorities for the coming year

September 2<sup>nd</sup>, Labor Day Picnic in the Park

September 5, 5:30 – Elephant Rock/CO Springs dinner at the SteamPlant

September 13<sup>th</sup> 4:00 – 8:00 pm – CML meeting in Silvercliff

September 21<sup>st</sup> 1:00 – 7:00 pm – Employee Appreciation golf tournament and dinner

## **Tenderfoot Tower Briefing**

The recent efforts of the Chaffee County Economic Development Corporation to facilitate broadband competition in the area have spurred the need to evaluate the current and ongoing tower situation on Tenderfoot Mountain. At this time, the tower infrastructure on Tenderfoot consists of a single 30' communications tower owned by KHEN (see Exhibit A) and a gazebo structure owned by the city. In addition to the KHEN equipment on the existing tower, two broadband companies currently lease space at the facility. Ridgeview Tel leases space from KHEN on the tower and Amigo Net leases space from the city on the gazebo. Until now, there has been enough tower space for these two broadband companies to deploy their infrastructure. However, the addition of at least two new competitors into the area has rendered the tower facility insufficient for the needs of the community.

The two new broadband entities, PEAK Internet and Chaffee County Telecom, LLC, have both requested tower space at the site. Because the current tower cannot be expanded, the construction of a new tower at the site is the most likely solution to the current tower space limitations. The city has several options for facilitating this site expansion. First, it could construct and operate its own tower at the site. There are several advantages to this solution. First, the city could construct a tower able to host several tenants (not just the two that are requesting space), mitigating the need for future tower additions to the site. Second, the ongoing lease revenue from the site could generate substantial positive cash flow for a long period of time (typical lease revenue would be between \$400-\$600 per month per provider). There are, however, significant disadvantages to building a tower. The initial construction cost could be \$75,000 or even higher depending on many variables such as soil condition and the current electrical infrastructure at the site. The city would also be responsible for the ongoing maintenance and insurance for the site. At this time, it is not clear how large a new tower would need to be in order to accommodate multiple carriers. Almost certainly, it will need to be as tall as the existing tower, but maybe as tall as 65'. Exhibit B shows what a similarly-sized tower looks like. Exhibit C illustrates an even larger multi-carrier tower. Clearly, smaller is better for the aesthetics of the community and the ideal would be to keep a new multi-carrier tower at 40' if possible.

Another option for the site would be for the city to allow new entrants to construct their own towers. Again, there are advantages and disadvantages to this route. The biggest advantage for the city would be to shift the initial capital construction responsibility over to the service provider. The ongoing maintenance and insurance responsibilities would also belong to the service provider. The most significant disadvantage to this option would be the potential for tower proliferation at the site. If a tower is added each time a new service provider enters the market, it is easy to imagine the negative visual impact such proliferation would have on the community.

A third option would be to permit a single, multi-carrier tower. Like the city-owned option, this multi-carrier tower would have the ability to host several (probably up to 4) service providers on a single structure. However, there might be difficulties with this option as well. It is not clear whether or not a service provider would be willing to lease space to other service providers at a reasonable rate. The parameters of lease negotiations could feasibly be written into the initial ground lease for the tower, but this could be a complex task given the constant fluctuation of tower rents in rural America.

While considering these issues, several questions should be kept in mind. First, does the city have the capital (both initial and ongoing) to build its own tower facility? If so, what rents will be charged to service providers? These two questions can help answer most of the questions surrounding return on investment and initial feasibility of construction. A third question would be, how quickly can this happen? In order for new broadband services to be made available this year, tower zoning and engineering would need to begin very soon.

**EXHIBIT A**



Existing (KHEN) 30 ft. tower on Tenderfoot Mountain.

**EXHIBIT B**



70 ft. Free-Standing Tower

**EXHIBIT C**



80 ft. Multi-Carrier (Free-Standing) Tower



**Memorandum**

TO: Salida City Council  
FROM: Audrey Gilpin, Deputy City Clerk  
DATE: August 21, 2012  
RE: Home Rule Information and Election Time Frame

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**General Overview:**

Dara MacDonald and I met with several members of the previous Home Rule Task Force about three months ago, and we discussed ways to bring Home Rule back to the forefront. The previous members of the task force present were Nancy McAninch, Steve Stewart, Theresa Casey, Greg Amidon, and Alan Sulzenfuss. Skye Ridley and Christine Sturgeon are previous members but were unable to attend.

During the meeting, Amidon stressed the effort needs to be community driven, and the City's initial role should be that of providing information and educational materials. We are looking to you as councilmen to recognize and reach out to community members that would be interested in driving the effort.

Attached are "An Overview of Colorado's Municipal Home Rule" and "A History of Home Rule," which provides the history and some benefits of home rule in Colorado and guidance in drafting a municipal charter.

**Initial Steps for Council:**

- Educate yourselves on the process and benefits of home rule, as well as the arguments against home rule.
- Establish if pursuing home rule is a priority for city council, recognizing the tight timeline involved and election expenses.
- Meet with a variety of community members and organizations to discuss the process and benefits of home rule; identify and reach out to individuals interested in driving the effort.

**Procedures for Adopting a Home Rule Charter:**

Authority to adopt a home rule charter is governed by Article XX of the Colorado Constitution and C.R.S. Section 31-2-101, *et seq.* The process involves two elections: one for election of the charter commission membership, and the second for the adoption of the actual charter itself. The following information was provided by Karp Neu Hanlon, P.C.

**I. Statutory Time Frame**

- Within **thirty days** of passage of the ordinance, the City Council calls for a special election to form a charter commission and elect commission members to be held within **120 days** after the date of the call of election. The charter commission must be composed of nine to 21 members and be an odd number. The default number is nine, but the initiating ordinance may establish a higher number up to 21. The initiating ordinance may also create districts of equal population from which to elect commission members, but this is optional. All registered electors are eligible to serve. Any vacancies will be filled by appointment of the City Council. The Council will also determine the dates and times the charter commission will meet.
- **Not less than 60 days** before the charter commission election, the City publishes notice of such election.
- Candidates for the charter commission will be nominated by filing a petition with the clerk with at least 25 signatures and a statement by the candidate to consent to serve if elected. Petitions must be filed **within 30 days** after publication of the election notice.
- As soon as possible after the completion of the filings, the City Council will publish a second notice of the election that includes the names of the candidates for the charter commission.
- The charter commission special election is held **between 60 and 120 days** after the date of the call of election. The voters will vote for or against forming the charter commission and cast ballots for electing the requisite number of commission members.
- **Not more than 20 days** after the election, the commission will meet to establish itself. The commission may employ a staff and consult with and retain experts. At least one public hearing must be held in preparation of a proposed charter.
- **Within 120 days** of its election, the charter commission submits to the City Council a proposed charter.
- **Within 30 days** after the date that the charter commission submits the proposed charter, the City Council publishes and gives notice of an election to determine whether the proposed charter shall be approved. The notice will include the full text of the charter proposal.
- **Within 60 days** after the proposed charter is submitted, the City Council sets a ballot title for the question.

- The election shall not be held less than **30 or more than 120 days** after publication of the notice.
- If approved by a majority of the voters, the charter shall be deemed approved and effective as of the date set forth in the charter.
- **Within 20 days after** the charter is approved a certified copy will be filed with the secretary of state and with the clerk.

## II. *Sample Time Frame for Adoption of Home Rule Charter*

### Using November 5, 2013 Election for Charter Election

- **September 4, 2012:** Council adopts ordinance calling for home rule charter.
- **October 4, 2012:** Last day to call for charter commission election. Notice of election must be published at least 60 days in advance of the election. Candidates must submit a petition and statement for candidacy within 30 days after publication of notice of election.
- **February 1, 2013:** Last day for charter commission election.
- **February 21, 2013:** Last day for Commission to hold first meeting.
- **June 21, 2013:** Last day for charter commission to submit proposed charter to City Council for Charter Adoption to be on ballot for November 5, 2013 general election.
- **July 19, 2013:** City Council can publish notice of election on proposed charter for November 5, 2013 general election.
- **September 17, 2013:** Last day for City Council to set ballot title for question on proposed charter.
- **November 5, 2013:** Election.

### Benefits of Adopting Home Rule:

Below is a summary of the various benefits of being a home rule municipality compiled from information provided by CML and the Town of Superior.

#### Elections

- Establish procedures and dates for municipal elections differing from those established by state statute, including such matters as regular and special election dates and the dates when elected officials will take office.

- Establish procedures for initiative, referendum and recall.
- Modify procedures for filling vacancies in elective offices.
- Specify the minimum age for elected officials.

Administration/Governance

- Determine the form of government and administrative structure, including the size of the governing body, the powers of elected and appointed officials, the terms of office of elected officials and whether they are elected from districts or at-large; quorums and voting requirements; the manner of filling vacancies; and the respective powers of elected and appointed officials, boards, commissions and staff.
- Establish procedures for the adoption of ordinances and resolutions; determining whether actions need be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication or posting of ordinances; publishing ordinances by title only; and determination of the effective date of ordinances.

Finance and Taxation

- Have available broader and more flexible taxing powers, including the ability to collect, administer and enforce sales taxes to determine what transactions are subject to or exempt from sales taxes, the ability to establish procedures for adoption, amendment, increase or decrease of taxes.
- Within limits, create new tax sources to meet local financial needs, subject to voter approval.
- Establish a sales tax base that is not uniform with the state sales tax (numerous home rule municipalities have a broader tax base with fewer exemptions).
- Simplify or otherwise revise procedures for budget and appropriation adoption, amendment and transfer of funds.
- Establish maximum debt limitations.

**COLORADO'S FIRST 100 HOME RULE MUNICIPALITIES**

Alamosa • Arvada • Aspen • Aurora • Avon • Basalt  
Black Hawk • Boulder • Breckenridge • Brighton  
Broomfield • Burlington • Canon City • Carbondale  
Castle Rock • Cedaredge • Centennial • Central City  
Cherry Hills Village • Colorado Springs  
Commerce City • Cortez • Craig • Crested Butte  
Dacono • Delta • Denver • Dillon • Durango  
Edgewater • Englewood • Evans • Federal Heights  
Fort Collins • Fort Morgan • Fountain • Frisco  
Fruita • Glendale • Glenwood Springs • Golden  
Grand Junction • Greeley • Greenwood Village  
Gunnison • Gypsum • Hayden • Holyoke  
Johnstown • Kiowa • Lafayette • La Junta  
Lakewood • Lamar • Larkspur • Littleton  
Lone Tree • Longmont • Louisville • Loveland  
Manitou Springs • Minturn • Monte Vista • Montrose  
Morrison • Mountain View • Mountain Village  
Mt. Crested Butte • New Castle • Northglenn  
Ophir • Ouray • Pagosa Springs • Parachute • Parker  
Pueblo • Rico • Ridgway • Rifle • Sanford • Sheridan  
Silt • Silver Plume • Silverthorne • Snowmass Village  
Steamboat Springs • Sterling • Telluride • Thornton  
Timnath • Trinidad • Vail • Ward • Westminster  
Wheat Ridge • Windsor • Winter Park  
Woodland Park • Wray • Yuma

# A HISTORY OF HOME RULE

November 2009

*by Kenneth G. Bueche, retired CML executive director*



*The Voice of Colorado's Cities and Towns*



*Top photo: Town of Hayden, Colorado's 100th home rule municipality, by David Kennedy.  
Bottom photo: City and County of Denver, Colorado's first home rule municipality, by Traci Stoffel.*

**COLORADO'S FIRST 100 HOME RULE MUNICIPALITIES**

Alamosa • Arvada • Aspen • Aurora • Avon • Basalt  
Black Hawk • Boulder • Breckenridge • Brighton  
Broomfield • Burlington • Canon City • Carbondale  
Castle Rock • Cedaredge • Centennial • Central City  
Cherry Hills Village • Colorado Springs  
Commerce City • Cortez • Craig • Crested Butte  
Dacono • Delta • Denver • Dillon • Durango  
Edgewater • Englewood • Evans • Federal Heights  
Fort Collins • Fort Morgan • Fountain • Frisco  
Fruita • Glendale • Glenwood Springs • Golden  
Grand Junction • Greeley • Greenwood Village  
Gunnison • Gypsum • Hayden • Holyoke  
Johnstown • Kiowa • Lafayette • La Junta  
Lakewood • Lamar • Larkspur • Littleton  
Lone Tree • Longmont • Louisville • Loveland  
Manitou Springs • Minturn • Monte Vista • Montrose  
Morrison • Mountain View • Mountain Village  
Mt. Crested Butte • New Castle • Northglenn  
Ophir • Ouray • Pagosa Springs • Parachute • Parker  
Pueblo • Rico • Ridgway • Rifle • Sanford • Sheridan  
Silt • Silver Plume • Silverthorne • Snowmass Village  
Steamboat Springs • Sterling • Telluride • Thornton  
Timnath • Trinidad • Vail • Ward • Westminster  
Wheat Ridge • Windsor • Winter Park  
Woodland Park • Wray • Yuma

# A HISTORY OF HOME RULE

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*The Voice of Colorado's Cities and Towns*



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## INTRODUCTION

More than a century ago (1902), Colorado citizens adopted Article XX of the Colorado Constitution conferring on municipal citizens the right to adopt a home rule charter, thereby providing local control for their municipal government. Since 1902 this opportunity has been utilized by an ever expanding number of communities. In 2009, Ouray and Hayden became the 99<sup>th</sup> and 100<sup>th</sup> municipalities respectively to adopt home rule.

This publication has been written to:

- celebrate over a century of municipal home rule and local control;
- highlight the 100 communities whose citizens have adopted and are utilizing home rule;
- provide information for communities that in the future consider home rule; and
- provide an in depth history of the origin and expansion of home rule for the benefit of current and future officials and citizens.

This publication was researched and written by retired CML Executive Director Ken Bueche, who has been a friend and mentor for so many years. Ken has had the unique experience of following home rule professionally for more than 40 years, as a law student and law clerk for CML, 1963-66; in private practice serving as an assistant city attorney, 1966-68; and as CML general counsel and ultimately executive director, 1968-2005. Following his retirement, Ken conducted extensive research on the early history of home rule utilizing legal documents, historical publications, and other early sources. Many of these are noted in the publication's footnotes and bibliography for readers who may want additional information.

We hope this history of home rule will be helpful for readers now and in the years to come. Municipal home rule is a cherished part of Colorado's Constitution that has stood the test of time.

Sincerely,

Sam Mamet  
Executive Director  
Colorado Municipal League

*Additional copies of this publication are available for free at*  
[www.cml.org/pdf\\_files/09\\_home\\_rule.pdf](http://www.cml.org/pdf_files/09_home_rule.pdf).

## MUNICIPAL HOME RULE DEFINED

Simply stated, municipal “home rule” is a form of government under the control of local citizens rather than state government. It is “self-government,” meaning municipal rather than state control over the organization and operation of local government activities. Home rule does not, however, relate to nor confer any enhanced authority relative to powers of the federal government. Home rule relates to state-local relations, not federal-local relations.

Historically in Colorado and throughout the nation, municipalities and other local governments have been creatures of the state legislature, with the local governments dependent on state enabling legislation and subject to state control and interference. This legal doctrine, prevalent in the absence of home rule, is known as “Dillon’s Rule,” named for a 19th century Iowa Supreme Court Justice and municipal law authority.

In Colorado, municipal home rule derives its authority directly from the Colorado Constitution. It affords citizens of cities and towns who adopt a local charter (1) freedom from the need for state enabling legislation and (2) protection from state interference in “both local and municipal matters.”

## ORIGIN AND HISTORY OF HOME RULE IN OTHER STATES

The government of many American cities was bad, if not terrible, during the last decades of the 19th century.

The era, 1865 to 1895, was one of tremendous physical growth of cities and expansion of municipal activities. From the standpoint of administration, it was a period of disintegration, waste, and inefficiency. Political machines and bosses plundered many communities. Lax moral standards of the times in business life, the apathy of the public, and general neglect of the whole municipal problem by leading citizens, by the press, and by the universities, all contributed to the low state of city affairs. Lack of a common body of knowledge and of definite standards of municipal government, coupled with legislative interference and local politics, produced a confused situation in local organization and responsibility. Corruption in city government was made possible by the prevailing spoils system, by the activities of national political parties in local elections, and by the absence of adequate instruments of democratic control and of scientific methods of administration. Outstanding public officials and administrators were few; municipal reference and research agencies were nonexistent; and organizations of public officials were in their infancy. The period has been justly described as the “Dark Ages” of American municipal history.<sup>1</sup>

In response to the treatment of cities by state governments, the home rule movement began. In 1875, Missouri became the first state to adopt home rule by including in its new constitution a home rule entitlement for cities over 100,000 population. In 1879, California became the second state to authorize home rule when its new constitution was adopted. Other states conferring home rule rights for cities during the remaining years of the 19th century included Minnesota and Washington.<sup>2</sup>

However, home rule and other municipal reforms became much more popular and prevalent during the Progressive Era – a period that historians generally date from 1900 to about 1915 or 1920.

A leading historian of American city government during the Progressive Era summarized the Progressive Movement this way:

In conclusion, how shall we account for and describe the Progressive Movement? There were national problems of great magnitude evidencing themselves chiefly in the cities. For the most part these were accounted for by the nineteenth-century changes in the nature of the economic world, for which the old assumptions were inadequate and many of them incorrect. Whole groups of people were aroused to compassion and indignant at the now patent injustices because of these facts and the attendant frustrations. Diagnosis and exposure of the nature of the problems had begun. At this point pragmatism with a conscience leading to activism took over. It was a confluence of many strands — populist, utopian, the experience and sensitivity of the settlements, the social gospel and the aroused conscience, the successes and failures of earlier reformers, frustrations of many groups, socialist reasoning, the rising consciousness of organized labor, scientific management, the Spanish-American War and its aftermath, a belief in progress – but all raised to a higher level, together with a freshness of approach and a moral component.<sup>3</sup>

Reformers were interested in a number of reform devices, including home rule, in fostering a sense of community. According to Griffith:

Most stress was laid upon home rule, nonpartisanship, elections-at-large, and development of neighborhood centers. Naturally, there were other arguments also for each of these. Among them was the thought that each would help weaken the power of spoils, the machine, and corrupt politics, at the state, city, and ward levels . . . . Government by the state, an agency outside the control of the voters of the individual city, was naturally the subject of further attack by the exponents of city self-government. The demand on the part of the city was insistent for a greater voice in its own affairs.<sup>4</sup>

Numerous states, including Colorado, adopted municipal home rule during the Progressive Era. The Progressive Movement and the rush for home rule slowed down after the commencement of World War I. However, additional states have adopted home rule over the years since then.<sup>5</sup>

The National Municipal League was probably the most prominent and influential national organization instrumental in promoting home rule and other municipal reforms during the Progressive Era and thereafter. The organization was founded in 1894 by local citizen groups and individuals interested in reforming municipal government. (In later years, the League would devote attention to reforming county and state government.)

In 1899, the National Municipal League adopted a “Municipal Program,” publishing it the following year. Later it was to be referred to as a “Model City Charter.” Over the years, the League has published several revised editions, including its current 8th edition published in 2003. (The League has changed its name to the National Civic League and relocated its offices from New York City to Denver. It is not to be confused with the National League of Cities, which is the national association of cities and towns.) This “Municipal Program” contained provisions regarding municipal

home rule to be incorporated in the state constitution and provisions for a Model City Charter. Its home rule features were described as follows:

Special legislation for cities was not absolutely prohibited, but it was surrounded by certain safeguards designed to protect the city from unwarranted interference with its local affairs. Home rule, the right to adopt and amend charters, was given to cities with a population of 25,000 or more. As Chairman Deming said: "The city's independence is guaranteed. The state legislature cannot meddle with purely local affairs." Elsewhere Mr. Deming defined the fundamental principle of the program in these words: ". . . ample power in the city to conduct the local government, without possibility of outside assistance or of outside interference save by such supervision of a central state administrative authority as may be necessary to enforce a state law applicable alike to all the cities or all the inhabitants of the state." All else in the program was detail in the application of this principle. And Professor Rowe declared that the object of the program was to provide such a position in the political system of the state and such a framework of government as would give to the city the widest possible freedom of action in formulating the details of its own organization and in the determination of its local policy.<sup>6</sup>

Home rule has remained a foundation of the National Civic League's municipal reform agenda through the years, including its latest model state constitution and city charter.<sup>7</sup>

## ORIGIN AND HISTORY OF HOME RULE IN COLORADO

Municipal home rule in Colorado was clearly a product of the Progressive Era in that it was adopted by state voters in 1902 and clarified and expanded by voters in 1912. Colorado's adoption in 1902 was probably influenced by developments in other states and by recommendations of the National Municipal League. Although historic evidence of this influence may be limited, the 1900 Model City Charter has been credited to have "formed the basis for a sweeping amendment to the Colorado Constitution."<sup>8</sup>

Historically, Colorado's adoption appears to have been prompted primarily by (1) actions of state government affecting Denver and its citizens and (2) a desire to form a consolidated city and county of Denver.

Denver had been granted a charter in 1861 by the territorial legislature. Denver and those other cities that were still operating under territorial charters retained the right to continue to operate under their special charters rather than being governed by general municipal laws when the constitution was adopted and statehood granted in 1876. (Georgetown is the only municipality still operating under a territorial charter.)

Following statehood, Denver's charter was amended or a new one enacted periodically by the General Assembly, and Denver eventually became the "political football" of the party in power. Classic examples of state interference were amendments enacted by the General Assembly in 1889 providing for a board of public works and in 1891 for a fire and police board, with members of both boards appointed by the governor. Thus, Denver's public improvements, public safety and related activities came under the control of state government.

Armed conflict nearly broke out in 1894 when Gov. Davis H. Waite had a dispute with two of his appointees to Denver's Fire and Police Commission over their failure to follow his policies and their subsequent failure to accept his attempt to remove them from office. Armed forces for the state and city faced off before cooler heads prevailed and weapons were withdrawn!

In addition to the desire for local control, civic leaders in Denver wanted to establish a consolidated city and county. Hence, interest in reform for Denver included both home rule and a consolidated city and county.

Relief came in 1901 when Denver Sen. John A. Rush, with the support of Gov. James Orman, secured passage of legislation to refer to statewide voters Article XX of the Colorado Constitution forming Denver as a consolidated home rule city and county and also conferring on the citizens of first- and second-class cities the right to adopt local charters and become home rule municipalities. Gov. Orman, in his inaugural address, gave strong support to the home rule amendment:

The question of home rule for Denver has been a disturbing one ever since the enactment of the law under which the governor appoints the Denver board of public works and the fire and police board. It may occur that governors will be elected that have little or no knowledge of the governmental affairs of such a city as Denver . . . [and] the responsibilities for all city employees should be cast upon the people who live in the cities. Place the responsibility where it belongs – upon the voters of the city.<sup>9</sup>

The amendment was approved by a vote of 59,750 for, to 25,767 against.<sup>10</sup>

While the right of citizens in other cities of the first and second class to adopt home rule was provided, the history is unclear to what extent these cities sought that right and to what extent voters in 1902 were influenced by the extension of home rule prerogatives statewide. A Colorado Municipalities article published in 1925 identified the following charters as having been adopted between the 1902 and the 1912 constitutional amendments: Denver, 1904; Colorado Springs, 1909; Grand Junction, 1909; Pueblo, 1911; Durango, 1912; and Delta, 1912.<sup>11</sup>

Subsequent to passage of the amendment in 1902, a great deal of legal and political controversy and turmoil occurred, apparently primarily involving Denver.<sup>12</sup> This caused supporters of home rule to initiate in 1912 a clarifying and strengthening amendment.

The 1912 measure rewrote Section 6 of Article XX to specifically enumerate various municipal home rule powers and included a powerful "catch-all" paragraph:

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.<sup>13</sup>

(Incidentally, the 1912 measure was placed on the ballot by initiative, not referral by the General Assembly. The right of initiative had been made possible by the 1910 voter-approved measure granting initiative and referenda powers to voters statewide.)

The 1912 measure also changed the 1902 provision that entitled home rule status to cities of the first and second class to any city or town "having a population of two thousand inhabitants." In addition, the measure "ratified, affirmed and validated" the charters and related elections of Denver, Pueblo, Colorado Springs, Grand Junction and of any other unnamed city that had adopted a home rule charter. The title of the 1912 initiative just referred to home rule for cities and towns, again not singling out Denver. The 1912 initiative passed by a vote of 49,596 for, to 44,778 against.

Similar to the situation with the 1902 election, it is unclear to what extent the interests of the five out-state cities that had adopted home rule charters before the 1912 vote, and of other cities, played in the 1912 election. In an effort to shed light on this, the author inquired of the five cities (Colorado Springs, Delta, Durango, Grand Junction and Pueblo) to ascertain if they could locate any local evidence of involvement.

Each city provided results of its research. None of the research indicated that any of the cities had experienced substantial interference from state government or that there had been any political involvement of the cities or their citizens in the drafting or passage of either the 1902 or 1912 amendments. However, the fact that citizens in five cities had chosen home rule before the 1912 statewide election demonstrates substantial statewide awareness or interest in home rule by the time of the 1912 election.

From the information provided by the cities, it appears that home rule supporters in these five cities were motivated in adopting their charters primarily by reforming or restructuring their city governments rather than overcoming state interference. Home rule was the means to achieve their ends.

The principal common provision of the five cities, based upon the histories they provided, was adoption of the commission form of government – a popular structure in that era that vested both administrative and legislative authority in a small number of elected officials. (Eventually, each city amended its charter to establish the council-manager form. In contrast, Denver's first locally adopted charter of 1904 provided for a mayor-council structure that has evolved into its current strong mayor-council form.)

Municipal government reform was a common concern apparent from historical information provided by Durango, Grand Junction and Pueblo. There was considerable displeasure in each city with their municipal government. Complaints appearing in newspapers or other sources for one or more of these cities mentioned a variety of systemic problems. Citizen efforts to adopt home rule were initially opposed or delayed by some councils and others in the establishment, but the persistence of citizens ultimately prevailed.

The prefatory synopsis to Grand Junction's charter stated eloquently in 1909 what supporters of home rule today might repeat:

The intent and purpose of this Charter is to establish a free and independent City, so far as the Constitution of the state will permit, their natural, inherent, and inalienable right of local self-government, with all its powers, duties, and responsibilities.

A third measure affecting home rule was approved in 1950. In 1949, the General Assembly passed HCR 10 that referred the amendment to voters. According to its

records, CML sponsored the 1949 legislation and spearheaded the successful vote in 1950.<sup>14</sup>

The 1950 measure amended Section 2 of Article XX relating only to compensation of Denver officers and, more important for municipalities statewide, amended Section 5 to allow charter amendments or the question of whether or not a charter convention be called to be referred by action of the governing body as well as by initiative. (Before 1950, charter measures could be initiated only by local voters. It was a cumbersome process, especially when minor changes were needed.) The amendment passed by a vote of 145,780 for, to 91,700 against.

Another important home rule amendment was approved by voters in 1970 as part of a local government reform measure referred by the General Assembly in 1969. The home rule portion of the measure was included with the support of CML. It added a new Section 9 to Article XX to (1) extend the right to adopt home rule to the citizens of each municipality, regardless of population or when incorporated, and (2) directed the General Assembly to enact statutory procedures to facilitate the adoption, amendment and repeal of home rule charters. (The referred measure also authorized the General Assembly to enact a more limited "structural" form of home rule for counties. Only a few counties have taken advantage of this form of home rule.) The 1970 measure was approved by an overwhelming vote of 325,512 for, to 170,986 against.<sup>15</sup>

The 1970 amendment has enabled many towns under 2,000 population to become home rule and led to CML-drafted Municipal Home Rule Act of 1971 which has served since 1971 as the procedure utilized in the adoption and amendment of charters.<sup>16</sup>

There have been other amendments over the years affecting home rule, such as TABOR in 1992 and the Term Limits Amendment in 1994, and a few specialized amendments, including the 1998 amendments to Article XX that created the City and County of Broomfield.<sup>17</sup>

## A PERSPECTIVE ON HOME RULE VERSUS STATE JURISDICTION

Considerable tension has existed and will continue to exist between local and state control. Municipal home rule has not eliminated that tension. However, home rule has established a political atmosphere and legal ground rules that have:

- enabled home rule municipalities to utilize diverse powers, organizations and procedures without the need for state enabling legislation;
- protected home rule municipalities from state interference in matters that are local and municipal in nature; and
- helped establish and preserve an atmosphere of state respect for local control for other local governments, resulting in fairly broad statutory authority for non-home rule local governments and sometimes a disinclination on the part of state officials to micromanage local governments; yet
- maintained for state government the flexibility and prerogative to manage and control matters that are of state or mixed state and local concern without home rule being an obstacle.

Preserving home rule authority has, nevertheless, required constant vigilance by CML, municipalities and other home rule supporters since state officials, private

entities, special interests, and individuals have often challenged home rule authority in the General Assembly and before the courts.

A major threat in recent years has been the attempt of some legislators to pass legislation pre-empting home rule authority, arguing that a subject matter is of state or mixed state-local authority. Some recent subject areas of attempted preemption include tax policy, regulation of weapons, employee residency requirements, breed-specific animal controls and planning and zoning regulations. Although members of the General Assembly are often on record as supporting local control, many have been inclined to vote against local control when partisan politics, member ideology, or special-interest pressures are their priority.

The first line of defense for municipalities and other supporters of home rule has been to defeat the legislation or delete the pre-emption language where it affected important local interests. This has often been effective.

Where legislation pre-empting home rule authority has been enacted, the second line of defense has been the courts. Affected home rule municipalities have often challenged such legislation in the courts or asserted home rule prerogatives in other litigation involving private parties. CML has sometimes filed amicus briefs in support of the home rule position. Only by continuing to assert home rule prerogatives before the General Assembly and the courts on important local control matters can the prerogatives of home rule be protected.

Nevertheless, there are times when state jurisdiction is in the public interest or insistence on local control may be untimely or unwise. In addition, there are other situations where it may be wise for home rule municipalities to take voluntary action collectively rather than relying on home rule protection. For example, CML has coordinated voluntary actions among home rule municipalities on tax administration and simplification, rather than simply relying on home rule prerogatives. Municipal officials need to exercise good judgment and restraint in some circumstances, choosing not always to play the home rule "card."

## CONCLUSION

As the graphs on pages 10 and 11 illustrate, municipal home rule in Colorado has truly stood the test of time. From its modest birth more than a century ago it has grown to be utilized at press time by 100 cities and towns. While statutory municipalites still outnumber home rule municipalities, the home rule municipalities constitute and serve more than 90 percent of the municipal population of Colorado.

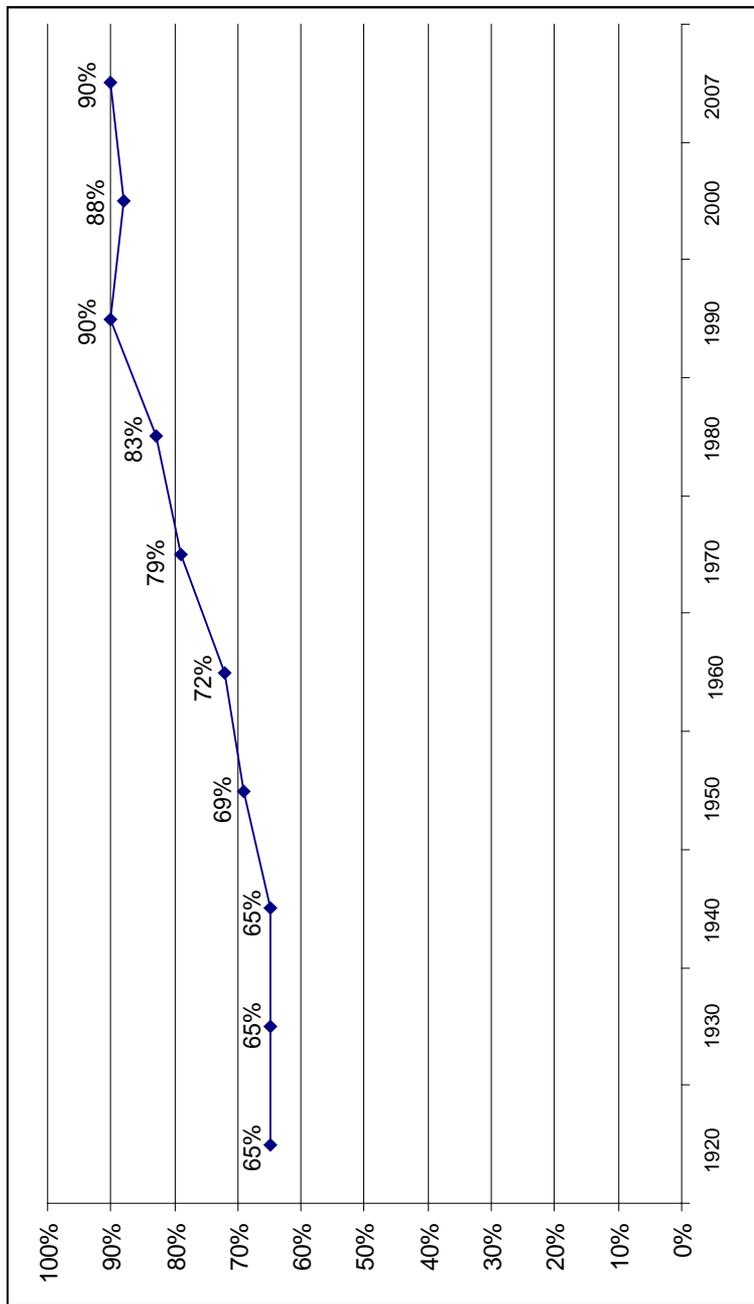
Colorado voters statewide have consistently supported municipal home rule by authorizing it in 1902, clarifying and expanding it in 1912, and extending its availability in 1970 to municipalities of all sizes. Moreover, there is no known instance where local citizens have voted to repeal the home rule status of their municipality.

Home rule will not produce local control under all circumstances and will continue to be attacked at times before the General Assembly and in the courts. What falls within municipal or state jurisdiction is sometimes in doubt and may always remain in some degree of flux. In addition, constitutional amendments affecting home rule, such as TABOR and term limits, have been and may continue to be a significant factor. The continued viability of home rule will depend, as in the past, on the

vigilance, assertiveness and loyalty of municipal officials and others who value local control.

In the final analysis, municipal home rule has immeasurably strengthened local control and facilitated flexibility and diversity in addressing local needs and desires. Home rule also has benefited statutory municipalities and other local governments by paving the way for new grants of authority based on home rule experience and reinforcing a Colorado ethic favoring local control rather than state interference and micromanagement.

**Graph 1:**  
**Percentage of municipal residents who live in a home rule city or town** *prepared by CML August 2009*



**Graph 2:  
Growth in home rule municipalities: 1920-2009** prepared by CML August 2009

	1920	1930	1940	1950	1960	1970	1980	1990	2000	2007	2009*
State population	939,191	1,035,791	1,123,296	1,325,271	1,771,158	2,224,610	2,907,856	3,304,042	4,301,261	4,919,884	
Municipal population	566,802	641,847	722,237	888,269	1,212,609	1,656,548	2,120,347	2,383,045	3,125,839	3,567,857	
% of state population in municipalities	60.35%	61.97%	64.30%	67.03%	68.46%	74.46%	72.92%	72.13%	72.67%	72.52%	
Home rule municipal population	368,392	418,667	466,627	610,252	875,871	1,301,486	1,757,578	2,132,834	2,764,817	3,225,293	
% of state population in home rule municipalities	39.22%	40.42%	41.54%	46.05%	49.45%	58.50%	60.44%	64.55%	64.27%	65.56%	
% of municipal population in home rule municipalities	64.99%	65.23%	64.61%	68.70%	72.23%	78.57%	82.89%	89.50%	88.45%	90.40%	
Number of home rule municipalities	9	10	10	13	22	38	56	68	80	96	100

\* population data not available for 2009

## END NOTES

- 1 FRANK MANN STEWART, *A HALF CENTURY OF MUNICIPAL REFORM: THE HISTORY OF THE NATIONAL MUNICIPAL LEAGUE* (University of California Press) (1950) at 10.
- 2 JOHN A. RUSH, *THE CITY-COUNTY CONSOLIDATED* (John A. Rush) (1941) at 141-150.
- 3 ERNEST S. GRIFFITH, *A HISTORY OF AMERICAN CITY GOVERNMENT: THE PROGRESSIVE YEARS AND THEIR AFTERMATH 1900-1920* (Praeger Publishers) (1974) at 32.
- 4 See id at 123.
- 5 See id at 123-25, 258; Rush *supra* note 2, at 150-58.
- 6 See Stewart *supra* note 1, at 38, 53.
- 7 The early history of municipal reform and home rule efforts and developments of the National Municipal League have been published in the following publications: See Stewart *supra* note 1; Alfred Willoughby, *The Involved Citizen: A Short History of the Nat'l Mun. League*, 1969 NAT'L. CIVIC REV.; Proceedings of the Milwaukee Conference for Good City Government and Sixth Annual Meeting of the National Municipal League (1900).
- 8 See Stewart *supra* note 1, at 48.
- 9 Marjorie Hornbein, *Denver's Struggle for Home Rule*, THE COLORADO MAGAZINE, Fall 1971, at 345.
- 10 The primary sources of the Colorado experience discussed above include: See Rush *supra* note 2; Hornbein *supra* note 9; JEROME C. SMILEY, *HISTORY OF DENVER* (Times-Sun Publishing Company) (1901); CLYDE LYNDON KING, *THE HISTORY OF THE GOVERNMENT OF DENVER WITH SPECIAL REFERENCE TO ITS RELATIONS WITH PUBLIC SERVICE CORPORATIONS* (The Fisher Book Company) (1911); Home Rule Amendment, 1901 Colo. Sess. Laws. 97-106 (codified as COLO. CONST. art. XX)
- 11 Don C. Sowers, *How to Secure a Home Rule Charter in Colorado*, COLORADO MUNICIPALITIES, (Oct.1925), at 10.
- 12 See King *supra* note 10.
- 13 1913 Colo. Sess. Laws. 669-671 (relating to the intent of the home rule amendment) (codified as amended at COLO. CONST. art. XX, § 6(h)).
- 14 1949 Colo. Sess. Laws. 775-776 (relating to compensation of officers and charter revisions) (codified as amended at COLO. CONST. art. XX, § 2,5); William A. Grelle, *Legislative Round-Up*, COLORADO MUNICIPALITIES, May 1949, at 72; COLO. MUN. LEAGUE, *Make Home Rule Work*, COLORADO MUNICIPALITIES, Aug. 1950, at 153; Glenn Donaldson, *Victory!*, COLORADO MUNICIPALITIES, Dec. 1950, at 235.
- 15 1969 Colo. Sess. Laws. 1247-1251 (relating to local government, and providing for home rule and service authorities) (codified as amended at COLO. CONST. art. XX, § 9).
- 16 COLO. REV. STAT. § 31-2-201 (2009).
- 17 COLO. MUN. LEAGUE, *HOME RULE HANDBOOK* (1999) app. at B.

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## Overview of Colorado Municipal Home Rule

by Sam Mamet, Executive Director  
and Rachel Allen, Staff Attorney  
Colorado Municipal League

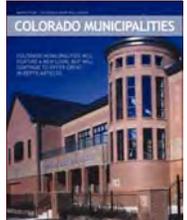


The Voice of Colorado's Cities and Towns  
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The views expressed at this forum are those solely of the presenter, and any legal advice should be obtained by appropriate legal counsel  
Prepared in May 2012

## Information

CML periodicals and the CML website [www.cml.org](http://www.cml.org) keep members informed.



## COLORADO MUNICIPAL LEAGUE MEMBERSHIP

### Interesting Facts

265 of Colorado's 271 incorporated municipalities are members of CML  
(97.8% of all municipalities are members of CML.)

Member municipalities range in population from 8 (Town of Lakeside) to 605,000 (City & County of Denver).

All 100 home rule municipalities in Colorado are members.

## Training



CML offers affordable training opportunities on cutting-edge topics.

- In-Person Workshops and Webinar Presentations
- 90<sup>th</sup> Annual CML Conference will be June 19-22 in Breckenridge

*"The class was super! I will be encouraging our elected officials and staff to take future classes."*

## Advocacy

*CML is your voice at the state and federal governments.*

**During the 2012 session of the General Assembly:**

- 71% of the bills CML supported were enacted into law
- 95% of opposed bills were killed, vetoed or amended so CML dropped opposition

**The League participates as amicus curiae, or "a friend of the court," when cities and towns have major litigation on appeal that impacts all municipalities.**

**CML Update** - a broadcast email sent out periodically by CML to members to keep you updated on state legislation, training events, and other resources of municipal interest. To sign up, simply fill out form and return to CML.

## Municipal Home Rule in Colorado

- Dillon's Rule historically views municipalities as "creatures of the state," dependent upon the state for their creation and for their continued existence. As such, municipalities lacking home rule status are limited to exercising those powers that have been granted by the state and subject to those provisions and limitations that have been imposed by the state.
- In 1902, an amendment to the Colorado Constitution provided the right to citizens in cities of the first and second class to adopt home rule, and in 1912, supporters of home rule initiated a clarifying and strengthening amendment that rewrote Section 6 of Article XX to specifically enumerate various municipal home rule powers with a powerful "catch-all" paragraph.
- Another important home rule amendment was approved by voters in 1970 which added a new Section 9 to Article XX to extend the right to adopt home rule to the citizens of each municipality, regardless of population or when incorporated.
- Article XX of the Colorado Constitution reserves both structural and functional home rule powers to municipalities and "the full right of self government in local and municipal matters " to citizens.

### General Arguments *For* Home Rule

- Article XX of the Colorado Constitution grants both general and specific powers to home rule municipalities, providing them greater flexibility when seeking solutions to local problems.
- These powers allow home rule municipalities to shape such solutions to fit local needs, without involving the state legislature or being subjected to undesirable limitations imposed statewide. Home rule allows municipalities to respond more quickly to changed circumstances or emergency situations by allowing legislative solutions at the local level through ordinances or charter amendments, rather than waiting for action by the state legislature.
- Home rule municipalities are not required to follow state statutes in matters of local and municipal concern and therefore enjoy freedom from state interference regarding local and municipal matters.

### General Arguments *Against* Home Rule

- The process of adopting a home rule charter involves some costs to the municipality – attorney’s or other consultant’s fees, expenses incurred from publication requirements, election costs, etc. can be a burden on the municipality.
- The prospect of an existing municipality adopting a home rule charter requires some change from the status quo along with the need to debate potentially volatile issues related to the structure and powers of the municipality, and therefore may be perceived as creating unnecessary risks in a community that is satisfied operating under existing statutes.
- Unless restricted by the charter, a home rule municipality has the potential to exercise more governmental powers than are available to statutory municipalities, which some local citizens may see as a disadvantage.

### General Arguments *For* Home Rule

- The express and implied enabling authority granted to municipalities in state statutes is sometimes ambiguous; home rule allows the municipality to act with greater assurance that its actions are properly authorized, especially if the charter reserves to the municipality authority to legislate on any and all matters of local concern.
- By empowering local citizens more directly, home rule enhances citizen control, interest, involvement and pride in their municipal government.
- Home rule is the embodiment of the principle that the best government is the one that is the closest to the people.

### Timeline for Home Rule Election

- Within 180 days of its election, the charter commission shall submit to the governing body a proposed charter
- Within 30 days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved
- The election shall not be held less than 30 nor more than 185 days after publication of the notice

### General Arguments *Against* Home Rule

- If a restrictive charter is adopted, the potential flexibility offered by home rule may be lost.
- Once adopted, the charter may serve as a vehicle for dissatisfied citizens to further limit the authority of the municipality in general and elected officials in particular through the adoption of binding charter amendments, i.e. amendments which cannot be changed or repealed by the governing body without a subsequent vote of the people.
- The lack of definite limits on home rule powers may constitute a disadvantage to a municipality by creating legal uncertainty when the municipality legislates in a relatively new area; the ultimate determination of whether a matter is truly of “local concern” requires an ad hoc determination in court.

### Drafting a Home Rule Charter

#### **Under Colorado law, the charter is principally an instrument of limitation in Colorado.**

- Sets forth the basic structure and organization of government, basic procedures to be followed by municipal government in the conduct of its business, basic powers of municipal officials and agencies, including any limitations thereon.
- Not necessary for the charter to spell out the details of municipal operations
  - Details can be left to the city council to deal with from time-to-time.
  - State law applies in the absence of a charter or ordinance provision.
- Charters are not easily or readily amended; consequently, great care must go into their drafting and unnecessary details and verbiage should be avoided.

### Contents of a Municipal Charter

- **Mandatory provisions:**
  - Provisions governing initiative and referendum of measures
  - Provisions governing recall of officers
- **Other examples of charter provisions**
  - Prefatory synopsis
  - Provisions continuing, amending or repealing existing ordinances
  - Form of government – allocation of legislative and administrative powers
  - Qualifications, terms of office, number of councilmembers and method of election
  - Election procedures
  - Administrative organization
  - Boards and commissions
  - Procedures for passage of ordinances, resolutions and motions
  - Personnel, merit or civil service system
  - Legal and judicial affairs
  - Budget control and financing
  - Municipal borrowing
  - Eminent domain
- **Borrowing provisions from other charters is helpful and time saving, but be wary of using charters from Colorado municipalities that were adopted years ago, guard against lifting unnecessary detail from other charters and be aware that charter provisions borrowed from the municipalities may not be relevant or appropriate for your community.**

### Considerations in Drafting a Charter

- The process followed is very important. A good process can facilitate drafting of a good charter and enhance chances for its approval by the citizens
- Constructive debate can be healthy – remember the debate which was carried out at the Constitutional Convention in Philadelphia.
- **Work as a team!**

### Considerations in Drafting a Charter

- Tight timeline, so the commission must act expeditiously in the 180 days they are granted
- Use your staff or consultant extensively and effectively; obtain competent legal advice.
- Provide adequate opportunity for citizen input before decisions are finalized.
- Ordinarily, charter commissions adopt an organization similar to their existing organization.
- In drafting a charter, take the long view.

### Authority and Flexibility Afforded to Home Rule Municipalities - Organization & Structure

- Form of Government: city manager who answers to council, strong mayor - weak council, or strong council - weak mayor system
- Disqualifying circumstances for elected officials as well as grounds and procedures for discipline or removal from office
- Expand or contract the number and types of elective offices, specify the date when newly elected officials take office, and provide flexibility for being elected at-large, by districts and redistricting
- Specify a minimum age for elected officials
- Provide flexibility and clarification regarding powers of mayor, council, manager, other officers and boards and commissions.
- Provide clear authority to adopt the council/manager form of government
- Modify or eliminate term limits for mayor and council

### Considerations in Drafting a Charter

- The charter should spell out which actions must be by ordinance as opposed to resolution or motion and the procedures applicable to enactment of ordinances. Make clear who votes and how many votes are necessary for the council to act.
- Effort should be concentrated on including in the charter fundamental and priority features, leaving other provisions to subsequent action by city council and staff to be modified from time-to-time as needs arise and conditions change. Leave the elected officials with sufficient flexibility to act and be responsive.
- Cross-reference state statute where appropriate, such as municipal election procedures
- Financing provisions, such as municipal bonding and use of local improvement districts, are important.
- Be careful about including unnecessary provisions sought by special interests.

### Authority and Flexibility Afforded to Home Rule Municipalities - Elections

- Establish regular election dates and times other than the dates required by statute
- Provide flexibility for special election dates
- Modify election requirements, including procedures for initiative, referendum and recall.
- Expand the right to vote in municipal elections
- Expand certain citizen powers, like initiative, referendum and recall

### Authority and Flexibility Afforded to Home Rule Municipalities - Procedures

- Modify requirements for enactment of local ordinances to expedite consideration and effective dates, such as one-reading procedure for emergency ordinances in cities
- Resolve legal doubt or strengthen the argument that the city by charter or ordinance may delegate decisions to administrative staff
- Repeal or modify statutory provisions governing bidding and awarding of public projects and disposal of public property
- Establish local zoning, subdivision and other land use procedures which are different from those applicable to statutory municipalities
- Provide council procedures and bind elected officials to them

### Decisions To Be Made By The Town Board

- **Size of the Charter Commission**
  - If your municipal population is over 2,000, then the commission may be composed of 9 to 21 members (must be an odd-number)
  - If your municipal population is under 2,000, then the commission shall be composed of 9 members
- **Date & time that the charter commission meets**
  - Eligibility to serve on the charter commission shall extend to all registered electors of the municipality
  - The commission may employ a staff; consult and retain experts.
- **Calendar for placing a home rule initiative on the ballot**

### Authority and Flexibility Afforded to Home Rule Municipalities - Finances

- Allow city/town collection and enforcement of local sales/use taxes
- Allow broader or narrower sales and use tax base
- Allow additional types of excise taxes: admissions, entertainment, tourism, and lodgers' taxes
- Clarify, simplify, or otherwise revise procedures for budget and appropriation and municipal enterprises
- Authorize refunds and exemptions not authorized by state law
- Increase general obligation bond authority and streamline requirements for issuance of bonds
- Facilitate formation of special improvement districts and expand purposes for which they can be formed
- Home rule does not exempt municipalities from requirements of TABOR

Growth in Home Rule Municipalities: 1920-2009  
 Prepared by CML, August 2009

	1920	1930	1940	1950	1960	1970	1980	1990	2000	2007	2009*
State Population	599,191	1,036,791	1,123,296	1,326,271	1,771,158	2,224,610	2,507,856	3,304,042	4,301,261	4,919,884	
Municipal Population	566,802	641,847	722,237	888,269	1,212,609	1,696,548	2,120,347	2,383,045	3,125,839	3,567,887	
% of State Population in Municipalities	94.59%	61.97%	64.30%	67.03%	68.46%	74.46%	72.92%	72.13%	72.67%	72.52%	
Home Rule Municipal Population	368,302	418,867	486,637	610,252	875,871	1,301,488	1,757,578	2,132,834	2,764,817	3,225,203	
% of State Population in Home Rule Municipalities	61.54%	40.42%	41.54%	46.05%	48.45%	58.50%	60.44%	64.55%	64.27%	65.56%	
% of Municipal Population in Home Rule Municipalities	64.99%	65.23%	64.61%	68.70%	72.23%	78.57%	82.89%	89.50%	88.45%	90.40%	
Number of Home Rule Municipalities	9	10	10	13	22	38	58	68	80	94	100

\* population data not available for 2009

### Authority and Flexibility Afforded to Home Rule Municipalities - Miscellaneous Powers

- Establish alternative procedures for management and operation of municipal utilities
- Impose terms and conditions of municipal employment and broader authority with respect to civil service or other personnel systems
- Broaden jurisdiction of municipal court
- Provide additional tools for economic development
- Clarify authority for or expand the types of services which the municipality can provide
- Set forth more specific ethics and conflict of interest rules

### Resources at the League

- **Matrix of Home Rule Charters (2008) publication**
- **Overview of Municipal Home Rule (2006) publication**
- **Home Rule Handbook (1999) publication**
- **Copies of every home rule charter**
- **Sample educational materials to distribute to citizens**

## Questions

Feel free to contact me or Rachel Allen via e-mail at [smamet@cml.org](mailto:smamet@cml.org) or [rallen@cml.org](mailto:rallen@cml.org) and via phone at (303) 831-6411 or (866) 578-0936 toll free

August 22, 2012

Alice De Stigter  
Gen Attorney  
Union Pacific Railroad  
1331 17<sup>th</sup> Street  
Denver, CO 80202

**RE: Union Pacific repeatedly stifles economic development efforts of small mountain town**

Dear Ms. De Stigter:

After more than four years of effort and tens of thousands of dollars spent, it appears that there is no possible way to find an acceptable path to resolution with the Union Pacific Railroad.

Salida is a small community (pop. 5,300) whose historic downtown is barricaded to the strategic north by the defunct Tennessee Pass line. Union Pacific controls more than 70-acres immediately across the Arkansas River from downtown Salida inhibiting growth of the downtown and limiting access to the river and public lands beyond the former yard. There are few remaining structures on the property and those that remain are in disrepair. The poor maintenance of the structures is consistent with the non-existent maintenance of the grounds. The property is an eyesore and blight on our community.

The City and private investors have approached the Union Pacific on a variety of fronts over the past 15 years since the line was last in service. All efforts have been to no avail. The City began a concerted effort in 2008 to address trespassing on the property to the benefit of the Union Pacific and to provide needed parking for our downtown and legal access to the river and public lands.

We were initially encouraged to pursue an easement along the river and to use an existing underpass to cross the tracks. A 10% design proposal was submitted in September 2008 and the response was that no easement would be permitted and the existing structure could not be used for an underpass. We were then encouraged to pursue purchase of land and construction of a new underpass beneath the out of service rails. Following this direction the City submitted 30% design plans and a purchase proposal in September 2009.

The Union Pacific subsequently sent the City a proposal to sell the subject 14-acres for \$2,025,000. To give you an idea of how preposterous this amount was, the City purchased 191-acres along the South Arkansas River with Highway 50 frontage and including senior water rights in 2004 for \$2,750,000. Remember that Salida is not a fancy resort community

like Vail or Aspen, we are a rural town in central Colorado hours from the nearest interstate or commercial airport. Your real estate manager Gregg Larsen and his appraiser from the Vail valley have a very skewed idea of what property is worth here in Salida and what a city in our position can afford.

At that point, we were very discouraged both by the proposed sale price and the prospect of having to spend hundreds of thousands of dollars to construct an unnecessary underpass below an out of service rail line. However, our hopes were rejuvenated once again when Great Outdoors Colorado (“GOCO”) announced last fall that they would sponsor a special round of grants focused on river corridors. We met with Union Pacific staff from both real estate and operations once again, dusted off the plans and began to assemble a grant application.

Since all involved, with the exception of Gregg Larsen, agreed that the \$2,025,000 price was ludicrous, the City commissioned a new appraisal that would meet GOCO’s rigorous standards. This appraisal came in at \$485,000. Mr. Larsen had his previous appraisal updated and came back with a value of \$1,595,000. Initial comments from GOCO staff indicated that the railroad’s appraisal would not be acceptable. Regardless, that purchase price would make it nearly impossible for the City to find the matching funds necessary for the grant. Mr. Larsen then encouraged us to make the Union Pacific a purchase offer which we did in May of 2012 for an amount of \$750,000. His response was a proposed purchase price of \$1,595,000. The door was slammed in our face once again.

Still vainly hoping that we could work something out with the Union Pacific for use of the vacant and derelict property, the City began pursuit of a lease for parking area to serve our downtown. Initially we requested a temporary use of the property to alleviate parking that would be constrained during a street reconstruction project currently taking place. When the lease came from the Union Pacific as an annual lease with an automatic renewal we were encouraged. City staff specifically asked if it was the intention of the Union Pacific to allow an annual lease as they had been told previously by Gregg Larsen that he would not allow such a term. The Union Pacific leasing staff stated that an annual lease for \$10,000 would be acceptable. The City consulted insurance providers. The attorneys worked out the terms on insurance and TABOR compliance. The City Council reviewed the lease, held a public hearing, passed and published an ordinance approving the lease.

After several months of discussion with the Union Pacific and a public approval process on the part of the City Council, the City was informed this week that the Union Pacific would not lease the property to the City for a parking lot. Rather, they would prefer the land sit vacant in its current unmaintained state continuing to impede the economy of this small mountain town. Once again we had been led down the primrose path by the Union Pacific Railroad only to have the door slammed in our faces.

For each of these attempts we have incurred expenses that now run in the tens of thousands of dollars. Each attempt to work with your staff has cost us in surveying, engineering, environmental assessments, appraisals, printing, publication, legal advice and staff time.

The hopes for economic survival of this community are intertwined with tourism and recreation. The parking lot is vital to the businesses in our downtown, the SteamPlant Event Center and Riverside Park which is our primary venue for outdoor events. The connection

to the public lands beyond the unused tracks is critical as we evolve into an outdoor recreation destination. The Union Pacific is a physical barrier, a corporate quagmire and a terrible neighbor to the community.

Sincerely,

Don Stephens  
Mayor

Encl: 10% Design Proposal  
30% Design Proposal  
2009 Purchase Proposal  
Salida Siding Trail grant application  
2012 Purchase Offer  
2012 Lease Agreement

Cc: U.S. Senator Mark Udall  
U.S. Senator Michael Bennet  
U.S. Representative Richard Lamborn  
CO Senator Gail Schwartz  
CO Representative Tom Massey  
CO Public Utilities Commission  
Joshua Epel  
James Tarpey  
Pamela Patton  
The Mountain Mail  
Denver Post  
Pueblo Chieftain  
Colorado Springs Gazette  
Colorado Central Magazine  
Mountain Gazette  
Omaha World Herald  
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