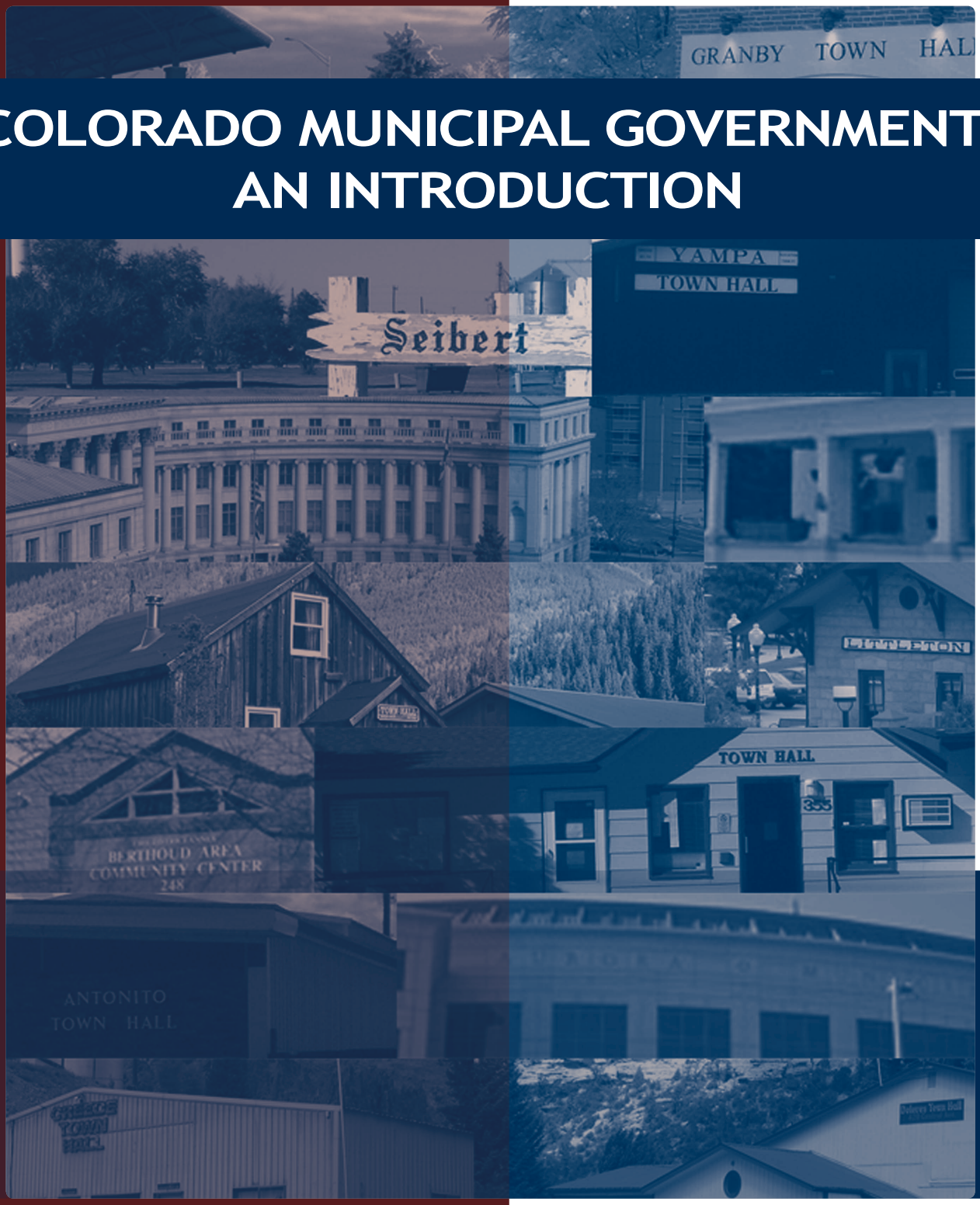
COLORADO MUNICIPAL GOVERNMENT: AN INTRODUCTION



CML
COLORADO MUNICIPAL LEAGUE
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FOREWORD

This publication is intended to be a general overview and reference guide to Colorado municipal government. It is a revised, updated, and substantially expanded edition of CML's *Elected Official's Handbook*. Obviously, the handbook cannot cover in detail all of the situations or laws affecting municipalities. For convenience and as background information, numerous legal authorities have been cited. However, it is important to bear in mind that statutes frequently change, new cases are decided by the courts, and both statutes and cases are sometimes subject to varied interpretations and may have different applications depending upon the facts and class of municipality involved. Consequently, one should consult with the municipal attorney when a legal problem or the need for legal advice arises.

League staff deserves recognition for their work in preparing this publication; in particular, Geoff Wilson, general counsel; Rachel Allen, staff attorney; Abby Kirkbride and Jason Meyers, current and former law clerks; Traci Stoffel, communications & design specialist; and all who made contributions to this publication.

As with all League publications, we welcome any comments or suggestions concerning this handbook.

Sam Mamet
CML Executive Director

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CHAPTER ONE: INTRODUCTION

THE DEMOCRATIC HERITAGE OF MUNICIPAL GOVERNMENT

Modern municipal mayors, councilmembers, and trustees are the heirs to the traditions of democracy first embodied in the ancient Greek city-state. Today, towns and cities are the functional equivalents of the Greek city-states. Modern municipalities are extremely complex organizations, but, at the same time, their operation is closer to the Greek ideal of direct democracy than any other unit of governance.

Municipal officials, unlike their counterparts in federal and state offices, are in direct contact with the people they serve on a continuous basis. Citizens hold their local officials responsible for everything from the state of the local economy and the level of pollution in the air to whether the potholes in the streets need repairing or the neighbor's dog should be restrained. This is municipal government in action: a living demonstration that people who live together in a community can and want to solve their own problems.

HISTORY OF COLORADO MUNICIPALITIES

The establishment of settlements in Colorado followed the "frontier" pattern of fate, not planning. The earliest settlements were military forts, the first being Bent's Fort in 1832 near present-day La Junta. Other forts included Fort Lupton, established in 1836, and Fort Pueblo in 1842.

The first permanent civilian settlements were established by Mexican Americans in southeastern Colorado. Among these was San Luis, established in April 1851, which is today the oldest continuously inhabited town in Colorado.

Other Colorado towns were established in waves. The first wave was fueled by the Pikes Peak Gold Rush of the late 1850s. The front-range communities of Denver, Boulder, La Porte (predecessor to Fort Collins), Fountain City (predecessor to Pueblo), and El Paso (predecessor to Colorado Springs) were all established in 1859. Later, waves of settlements were fueled by the silver boom and the cattle industry during the 1870s. Silver towns included Leadville, Silverton, and Idaho City (now Idaho Springs), then Aspen, Rico, Telluride, and Creede. Cattle towns (also called colony towns) included Greeley, Longmont, and Sterling.

Colorado towns and cities have grown and multiplied over the decades. In 2013, Colorado is home to 271 separate municipalities that range in population from fewer than 20 residents to more than 600,000. Citizens establish a municipality through a process known as incorporation.[1]

INTRODUCTION TO MUNICIPAL LAW: THE MUNICIPALITY'S PLACE IN THE LEGAL UNIVERSE

FEDERAL LAW

The states (and their political subdivisions, including municipalities) must always operate within the constraints of the federal constitution, which is the supreme "law of the land."[2] Legislation by the Congress must be pursuant to "enumerated powers" set out in the federal constitution. Where Congress has such legislative power, its legislation governs over state constitutional provisions and state and local legislation.[3]

STATE LAW

The state constitution is the ultimate authority for state law. Thus, actions of all municipalities are always subject to both the state and federal constitutions. In addition, state legislation may or may not control the activities of a municipality, depending on the classification of the municipality, and — in the case of home rule municipalities — on the subject matter of the legislation, as well. The general classifications of municipalities are statutory municipalities, special territorial charter municipalities, and home rule municipalities. Each of these major classifications are discussed below.[4]

Statutory municipalities. Except as specifically limited by state constitutional provisions,[5] the state legislature has complete power over the creation, organization, and power of statutory municipalities. Also, statutory municipalities have

1 C.R.S. §§ 31-2-101 to 31-2-109.

2 U.S. Const. art. VI, § 2

3 *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528. (1985) (This 1985 U.S. Supreme Court decision overruled the prior rule of *Nat'l League of Cities v. Usery,* 426 U.S. 833 (1976), which held a state possessed "traditional governmental powers" with which not even Congress could interfere.).

4 For further information, see the Colorado Municipal League's (CML's) FAQ: Forms of Municipal Government in the appendix.

5 Examples of state constitutional limitations on state legislative power over municipalities include: art. V, § 35 (General Assembly cannot delegate to any special commission or private corporation the power to supervise or interfere with municipal affairs); and art. X, § 7 (General Assembly cannot impose taxes for municipal purposes).

only those powers granted by state legislation. While grants of power may be implied in some circumstances, the courts generally construe state legislation strictly against finding implied grants of power for statutory municipalities.[6]

The most basic source of Colorado legislation governing statutory municipalities is title 31, although many applicable laws appear elsewhere in the statutes. Provisions for the general organization and structure of statutory municipalities are:

- *Cities, mayor–council form:* C.R.S. §§ 31-4-101 to 31-4-113.
- *Cities, council–manager form:* C.R.S. §§ 31-4-201 to 31-4-221.[7]
- *Towns*: C.R.S. §§ 31-4-301 to 31-4-307.

Traditionally, the legislative classification of statutory municipalities as cities or towns is based on population: A town has a population of 2,000 or fewer; a city has a population of more than 2,000. Towns or cities that have gained or lost population, but have not reorganized as cities or towns, respectively, will be exceptions to this rule, as reorganization is optional. See the definitions of "city" and "town" at C.R.S. §§ 31-1-101(2) and (13). Statutes dealing with the classification of cities and towns (including procedures for reorganizing due to changes in population) appear at C.R.S. §§ 31-1-201 to 31-1-207. The differences between statutory cities and towns are mostly a matter of structure and organization. There are only a few differences in substantive powers and procedures.

Special territorial charter municipalities. There is one "special territorial charter" municipality in Colorado: the Town of Georgetown.[8] Georgetown operates under a charter granted by the territorial government of Colorado, which may be amended from time to time by the General Assembly.[9] Historically, a territorial charter has been construed as strictly against the municipality as the statutes are against statutory cities and towns, i.e., in general no grant of power will be *implied*, but must be express.[10] The territorial charter is thus quite limiting compared to a home rule charter. Unlike statutory municipalities, however, territorially chartered municipalities are not bound by the body of statutory law found in title 31 which addresses matters of local concern. These laws are merely "available" to the territorially chartered municipality.[11]

Home rule municipalities. The "home rule" classification of municipalities have a special relationship to state legislation, a relationship governed by art. XX of the state constitution.

Further information on municipal home rule in Colorado can be found in *Home Rule Handbook* (1999), *Overview of Municipal Home Rule* (2006), *A History of Home Rule* (2009), and *Matrix of Colorado Home Rule Charters* (2008), published by the Colorado Municipal League (CML), or Chapter 7 of this publication.

The authority of a home rule municipality to act in a certain area absent statutory authority or in conflict with existing legislation turns on whether the subject matter is characterized as being of local and municipal concern, of statewide concern, or of mixed local and state concern. In *City and County of Denver v. State*, 788 P.2d 764 (Colo. 1990), herinafter *Denver v. State*, the Colorado Supreme Court set forth a number of factors to consider in determining whether a matter is of local, statewide, or mixed concern. The factors include the need for statewide uniformity in regulation, the extraterritorial impact of the regulation, whether the matter is one traditionally governed by state or by local government, and whether the Colorado Constitution specifically commits a particular matter to state or local regulation. Furthermore, a legislative declaration that a matter is of statewide concern may be given some weight in the court's determination, but it is not binding.[12]

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6 Dillon, Mun. Corp. § 55 (2d ed. 1873); McQuillin, Mun. Corp. § 10.09 (3d ed. 1996). *See Phillips v. Denver*, 34 P. 902 (Colo. 1893); *Durango v. Reinsberg*, 26 P. 820 (Colo. 1891); *Aurora v. Bogue*, 489 P.2d 1295 (Colo. 1971); *Sheridan v. Englewood*, 609 P.2d 108 (Colo. 1980). *See* C.R.S. § 31-15-101(2) for a general grant of implied and incidental powers.

7 Note that C.R.S. § 31-4-204 provides that MOST laws applicable to a municipality before it adopts the council–manager form of government, which are not inconsistent with this part, continue to apply after the council–manager form of government is adopted. This provision thus presumably incorporates the provisions dealing with mayor–council cities (C.R.S. §§ 31-4-101 to 31-4-113), which address subjects the statutes in Part 2 (C.R.S. §§ 31-4-201 to 31-4-221) do not address. Note also that just because a municipality has a city manager or city administrator does not necessarily mean that it is operating under these statutes, as the mayor–council form of government also allows for the appointment of "such other officers, including a city administrator, as may be necessary or desirable." C.R.S. § 31-4-l07(2)(a).

8 Prior to adopting home rule charters in December 1991 and January 2001 respectively, Central City and Black Hawk were special territorial charter municipalities.

9 For example, Black Hawk's territorial charter was amended by the General Assembly in the 1993 legislative session. Note that an amendment of a territorial charter by the General Assembly is not special legislation prohibited by the Colorado Constitution, Colo. Const. art. XV, § 2; *Brown v. Denver,* 3 P. 455 (Colo. 1884).

10 *See, e.g., Central City Opera House Ass'n v. Central*, 650 P. 2d 1349 (Colo. App. 1982); *Central v. Axton*, 410 P.2d 173 (Colo. 1966).

11 C.R.S. § 31-1-102. It should be pointed out that the definition of "municipality" in C.R.S. § 31-1-101(6) includes territorial charter municipalities, which seems to indicate a legislative intent that the statutes of title 31 do apply to them. However, C.R.S. § 31-1-102 states that the mere use of the term "municipality" in title 31 indicates no intent by the legislature to preempt special territorial powers. *See also Georgetown v. Bank of Idaho Springs*, 64 P.2d 132 (Colo. 1936). The statutes governing reorganization of a territorially chartered city or town to a statutory form are found at C.R.S. §§ 31-2-301 to 31-2-309.

12 *Denver v. State*, 788 P.2d 764 (Colo. 1990), followed in *Walgreen Co. v. Charnes*, 819 P.2d 1039 (Colo. 1991); *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992); *Commerce City v. State*, 40 P.3d 1273 (Colo. 2002).

In *matters of local and municipal concern*, the governing body of a home rule municipality is free to act without statutory authority (but within the constraints of its charter and the federal and state constitutions). Such local actions by home rule municipalities also will supersede any conflicting state statutes.[13] But if a home rule municipality does not take affirmative action by charter provision or by ordinance, the home rule municipality will remain under the control of applicable state laws in that area.[14] In addition, unless precluded by its charter, a home rule municipality generally may avail itself of statutory grants of power. Whenever statutes are cited or discussed, home rule municipalities should bear in mind that the statutes may or may not be controlling, depending on the subject matter of the statute, as discussed below, and whether there has been superseding action by the municipality. The municipal attorney should be consulted whenever there is any doubt. In *matters of exclusive statewide concern*, a home rule municipality has no authority other than that granted by state legislation — the area is said to be "preempted" by the state.[15] In matters of *mixed statewide and local concern*, both the state and home rule municipalities have authority; but, to the extent that municipal action and state legislation conflict, the state legislation will prevail.[16] If there is no conflict (i.e., the ordinance does not prohibit what the statute authorizes, or vice-versa), the municipal action and the state legislation both will be given effect.[17]

Generally, the home rule charter is regarded as an instrument of limitation, not of grant. That is, while actions of a home rule municipality cannot violate the charter's express limitation, they need not be authorized specifically by it.[18] Often, however, express grants of power do appear in the charter. Statutes concerning the procedures for adopting, amending, and repealing home rule charters appear at C.R.S. §§ 31-2-201 to 31-2-225; see also the Colorado Constitution at art. XX, sec. 9.

Finally, it should be mentioned that any body of written law requires interpretation. In our legal system, this interpretation is the function of the courts and exists in the form of case law or reported court decisions. The United States Supreme Court is the ultimate authority on what the federal constitution and federal legislation mean. The Colorado Supreme Court is the ultimate authority on what the Colorado Constitution and state and local legislation mean. Interpretations by lower federal and state courts are important, but are subject to review (reversal or overruling) by higher courts. In some areas, court decisions have created "common law" that can look to where legislation does not exist or is inapplicable. Lastly, there are "implicit powers of the sovereign," which a court sometimes will look to for authorization of municipal action.[19]

SCOPE OF THIS PUBLICATION

This publication cannot address every subject that mayors and members of governing bodies may face, and it does not claim there is any one best way for municipal officers to perform their jobs. This is, instead, a compilation of the ideas and experiences of a large number of municipal officials from Colorado and other states, assembled here with the hope that it may offer both veteran and newly elected municipal officials the benefit of this perspective and experience.

State statutes provide considerable detail on what municipalities can and cannot do. While this book does more than merely outline legal matters, much of the content is based on pertinent provisions of the state statute. This text is not intended as a substitute for study of the statutes or for competent legal counsel.

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13 *Denver v. State*, 788 P.2d 764, 767 (Colo. 1990). *See also Denver v. Hallett*, 83 P. 1066 (Colo. 1905); *Mauff v. People*, 123 P. 101 (Colo. 1912). *Also* refer to the discussion of C.R.S. § 31-15-101 with regard to the corporate powers of municipalities, *supra* note 6. This discussion is important for both home rule and territorially chartered municipalities.

14 Colo. Const. art. XX, § 6; *Vela v. People*, 484 P.2d 1204 (Colo. 1971).

15 *Denver v. State*, 788 P.2d 764,767 (Colo. 1990).

16 *Denver v. State*, 788 P.2d 764,767 (Colo. 1990). *See also Woolverton v. Denver*, 361 P.2d 982 (Colo. 1961); *Vela v. People*, P.2d 1204 (Colo. 1971).

17 *Denver v. State*, 788 P.2d 764, 767 (Colo. 1990). *See also DeLong v. Denver*, 576 P.2d 537 (Colo.1978); *C. & M. Sand & Gravel v. Bd. of Cty. Commr's, Boulder*, 673 P.2d 1013 (Colo. 1983).

18 Contrast this situation with that of the territorial charters, discussed above. See *People ex rel. McQuaid v. Pickens*, 12 P.2d 349 (1932); *but see Fellows v. LaTronica*, 377 P.2d 547 (Colo. 1962) (discussing implied charter limitations).

19 *See, e.g., Glenn v. Georgetown*, 543 P.2d 726 (Colo. App. 1975), *cert. denied*.

CHAPTER TWO: COMPOSITION AND ORGANIZATION OF THE GOVERNING BODY

FORMS OF GOVERNMENT

Statutory towns and statutory cities (unless they choose otherwise as described below) are organized under the "mayor–council" form of government in which the mayor is elected by popular vote. The "mayor–council organization" section of this chapter deals with powers, duties, and variations in the mayor–council form of municipal government. While all statutory towns must be organized under the mayor–council form of government, statutory cities may organize themselves differently.[1]

Statutory cities may exercise one of several options to organize under a "council–manager" form of government. In addition, statutory cities may choose to organize either with or without a popularly elected mayor. These options are discussed further in the "council–manager" organization section of this chapter.

Statutory towns are governed by a body called the "board of trustees," while statutory cities are governed by a "city council." References to a "governing body" in this handbook are meant to apply equally to city councils and town boards of trustees, unless specifically noted to the contrary.

MAYOR-COUNCIL ORGANIZATION

THE POSITION OF MAYOR

Qualifications to serve. Colorado statutes provide that to hold the office of mayor in a statutory town or city, a person must be: a registered elector of that municipality; a resident within the town or city for at least 12 consecutive months before the date of election (or a 12-month resident of territory more recently annexed to the municipality); and at least 18 years old on the date of the election.[2]

Candidacy and election. A person who wants to become a candidate for the office of mayor and meets the qualifications must have filed a petition for nomination with the municipal clerk no later than 30 days before the election.[3] The petition may only be circulated between and including the 50th and 30th days before election day.[4] Petitions with nonconforming signatures may be amended by the addition of valid elector signatures any time up to 22 days before the election.[5]

These circulation and "cure" periods are different in statutory city elections that are "coordinated" and run by the county clerk. For these elections, nominating petitions may be circulated and signed beginning on the 91st day prior to the election and must be filed with the municipal clerk no later than the 71st day prior to the election. Signature deficiencies may be "cured" at any time before the 67th day prior to the election.[6]

The petition must contain a written affidavit of the candidate swearing that the candidate satisfies the legal requirements for holding office and accepting the nomination, as well as the candidate's name or nickname (exclusive of professional designations) and address.[7] Petitions for the nomination of mayors in statutory towns must contain at least 10 valid addresses and signatures of currently registered municipal voters, while petitions in statutory cities must contain at least 25 such signatures.[8]

The mayoral candidate who receives a plurality of the votes, that is the greatest number of votes cast, is elected.[9] For example, in a three-way race between X, Y, and Z, with X receiving 33 percent of the votes cast, Y receiving 35 percent of the votes, and Z receiving 32 percent of the votes, then Y, having received the greatest number of votes or a plurality, is elected.

It is possible for a person to be elected mayor by a sufficient number of write-in votes without having previously filed a nominating petition, although in such cases the person's name would not have appeared on the printed ballot. However,

1 C.R.S. § 31-4-201.

2 C.R.S. § 31-10-301. All statutory citations in this publication are to the 2012 edition of the Colorado Revised Statutes as amended and revised by the Sixty-Eighth Colorado General Assembly at its First Regular Session in 2012.

3 C.R.S. § 31-10-302(6).

4 C.R.S. § 31-10-302(2).

5 C.R.S. § 31-10-302(4).

6 *See* C.R.S. § 1-4-805. For more details on "coordinated elections," see CML, *The Election Book* (2011).

7 C.R.S. § 31-10-302(6).

8 C.R.S. § 31-10-302(2).

9 C.R.S. § 31-4-207(2).

municipalities may adopt an ordinance that requires a write-in candidate to file an affidavit of intent within 20 days before the election, stating his or her qualifications, as well as a desire to be elected.[10] In any election "coordinated" by the county clerk, write-in candidates must file an affidavit by the close of business on the 67th day before the election.[11]

Tenure and term of office. The mayor is elected either to a two-year term[12] or a four-year term (if the governing body has provided for four-year, overlapping terms for both its members and the mayor).[13] To qualify for office, the mayor-elect must execute an oath or affirmation to uphold both the United States and Colorado Constitutions and, if the municipal legislative body requires, also must execute a bond for the faithful performance of his or her duties. Failure to fulfill either of these requirements may render the mayor ineligible to hold office, even though elected by the voters.[14]

Under the Colorado Constitution, all nonjudicial elected officials of local government are limited to serving two consecutive terms in office (except, if the term of office is two years or shorter in duration, such officials are limited to serving three consecutive terms in office).[15] These term limits apply to all elected municipal officials in both statutory and home-rule municipalities. Terms are considered consecutive unless they are at least four years apart.[16]

The voters of a statutory city or town may modify or eliminate these term-limit requirements by approving a legislatively referred measure or initiative;[17] for the 144 Colorado cities that had attempted to eliminate or modify their term limits since 1995, 111 of the 191 total local "opt-out" elections have been successful.[18]

Vacancies. A vacancy in the office of mayor may occur in any of several ways, including by death, disability, resignation, removal, or failure to qualify after being duly elected.

For statutory towns, when a vacancy in the office of mayor occurs before the expiration of the current term, the board may fill the vacancy either by appointment or special election.[19] If by appointment, the board may appoint a temporary replacement who serves for the remainder of the term of the vacated office until the term of a successor, elected at the next regular municipal election, commences.[20] If by election, the board may call a special election to fill vacancy, but the person elected by the special election still will serve only until the next regular election, and will step down when the term of the successor commences.[21] If the board has not made an appointment or called an election within 60 days after the vacancy occurs, then the town loses the option to choose a preferred replacement method, and instead must order an election as soon as practicable to fill the vacancy.[22] Regarding temporary absences of the mayor, town boards are required by law to choose one of its members to serve as mayor pro tem at its first meeting, to "perform the mayor's duties" at any given meeting where the mayor may be absent or otherwise unable to act.[23]

For statutory cities, when a permanent "vacation of office" in the office of mayor occurs before the expiration of the current term, the council may fill the vacancy either by appointment or election. If by appointment, the council may appoint any "registered elector" to act as mayor until the term of office of an elected successor should begin. The city council can choose to call a special election "as soon as practicable" to fill the vacant seat, or can elect to await the next regular election.[24] Unlike the case in towns, city councils are not required to choose a mayor pro tem at its first meeting, but are rather allowed to temporarily appoint "one of their own number" to serve as acting mayor or mayor pro tem in cases whenever the mayor may be absent temporarily for town or otherwise unable to perform his or her duties.[25]

Removal and resignation. A mayor may resign at any time. Although the statutes do not provide any specific procedures, presumably the resignation must be submitted to the governing body to be effective.

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10 C.R.S. § 31-10-306.

11 C.R.S. § 1-4-1102; *see also* CML, *The Election Book* (2011).

12 C.R.S. § 31-4-105; § 31-4-301(2).

13 C.R.S. § 31-4-107(3); § 31-4-301(5).

14 *Id.*

15 Colo. Const. art. XVIII, § 11.

16 *Id.*

17 *Id.*

18 *See* CML, Historical Municipal Elections Spreadsheet: Term Limits available at *www.cml.org/uploadedFiles/CML_Site_Map/_Global/pdf_files/election_term.pdf.*

19 C.R.S. § 31-4-303.

20 *Id.*

21 The term of the successor commences with his or her taking the oath of office, in accord with C.R.S. § 31-4-401.

22 C.R.S. § 31-4-303. These requirements generally apply to vacancies in other elected municipal offices, including positions on the governing body.

23 *Id.*

24 C.R.S. § 31-4-103(1).

25 C.R.S. § 31-4-103(2).

In statutory towns, a mayor may be removed from office by a majority vote of the board of trustees. A charge must be made in writing and there must be an opportunity for a public hearing prior to such removal, except when the mayor has moved his or her residence out of the town.[26]

In statutory cities, the mayor may be expelled or removed from office by a two-thirds majority vote of all the members elected to the council, if good cause is shown. No member, including the mayor, may be subjected to a second vote for removal for the same offense.[27]

Recall. A mayor, like any other elected official in Colorado, may be recalled by registered voters entitled to elect a successor to that office.[28] The petition for recall must include a general statement of the grounds for recalling the mayor, although these grounds may not be challenged in court.[29] To be valid, each signature must be accompanied by the address of the currently registered elector signing the petition. The minimum signature requirement for recall petitions is the number of registered electors equal in number to 25 percent of the entire vote cast for all the candidates for that particular office at the last regular election.[30] Once a petition is found adequate, the governing body must call an election, to be held in not less than 30 nor more than 90 days after the date of submission of the petition to the governing body by the clerk.[31] However, if a regular election is scheduled within 180 days, then the recall must be held in conjunction with that election; except that, if the officer sought to be recalled is seeking reelection in the already scheduled election, only the question of such officer's reelection shall appear on the ballot.[32] If done in a written letter to the clerk, a letter of resignation for the target of the recall will terminate any pending recall proceedings, unless otherwise impracticable, in which case, votes on the question shall not be counted.[33]

A recall petition may not be circulated or signed against the mayor unless he or she actually has held office at least six months. Once an unsuccessful recall election has been held, no further attempt may be made to recall the mayor for the remainder of his or her term of office, unless a petition is submitted meeting all of the previously stated requirements equal to 50 percent of the votes cast for mayor in the last regular election.[34]

If at any recall election the incumbent whose recall is sought is not recalled, or in the event of a protest, a hearing officer determines that the petitions are not sufficient based upon the conduct of the circulators, the municipality has the discretion to repay the incumbent for any money actually expended as expenses in defending the recall election, if so provided by ordinance.[35]

Compensation. The mayor's salary must be set by the governing body by ordinance at or before the last regular meeting, prior to the holding of the regular election, and may not be increased or decreased during the mayor's term.[36] In this way, the governing body is never in the position of changing the salary of a current mayor while he or she is presiding over the meeting of the governing body.[37]

Mayor pro tem. The governing body is authorized to appoint one of its own members to serve as mayor pro tem. The mayor pro tem acts as the mayor in the mayor's absence or if the mayor is temporarily unable to perform the duties of office for any reason or, if the mayor should resign, until the appointment or election of the new mayor.[38] In statutory towns, the statutes specifically require that such an appointment be made at the first meeting of a newly elected board of trustees.[39] Even in a town that has chosen to make its mayor a nonvoting member, the mayor pro tem continues to have "the same voting powers as any member of said board."[40]

Procedural duties and responsibilities. The mayor's many responsibilities stem from both law and custom. Duties as chief ceremonial officer of the municipality may be extensive and vary from community to community. The mayor presides

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26 C.R.S. § 31-4-307.

27 C.R.S. § 31-4-108(1).

28 C.R.S. § 31-4-501 et seq.; Colo. Const. art XXI, § 4.

29 C.R.S. § 31-4-502.

30 *Id.*

31 C.R.S. § 31-4-503(4).

32 *Id.*

33 C.R.S. § 31-4-504(1).

34 C.R.S. § 31-4-505.

35 C.R.S. § 31-4-504.5.

36 C.R.S. § 31-4-109; § 31-4-301(4); § 31-4-405.

37 Many mayors in Colorado serve without pay, while others receive only token payments. Comparisons are not meaningful without considering the amount of time the mayor must devote to municipal affairs. Contact CML for further information on salaries and fringe benefits compensation.

38 C.R.S. § 31-4-103; § 31-4-303.

39 C.R.S. § 31-4-303.

40 C.R.S. § 31-4-302.

over all meetings of the governing body. Unless otherwise provided for by an ordinance enacted during the 60 days preceding the election of the mayor, the mayor also is a voting member of the governing body.[41]

In statutory cities, the mayor is directed by statute to act as the chief executive officer and conservator of the peace.[42] The mayor also must ensure that city ordinances and regulations are obeyed faithfully and constantly through the exercise of powers to maintain order and keep the peace.[43] Duties and responsibilities required of city councilmembers are required of the mayor as well, insofar as they are compatible with his or her other duties.[44]

Proclamations. Proclamations may be issued by the mayor on occasions authorized by ordinance and frequently are used as formal public-policy declarations. Often, proclamations are based on custom and are used to increase community awareness of certain topics for a specified period of time. Thus, it is common for mayors to issue proclamations that relate to such matters as fire-prevention month, clean-up week, harvest-festival week, and other similar occasions. Such proclamations have no legal effect. Proclamations are more meaningful if their subject matters are limited to activities that have some bearing on or relationship to municipal government.

Powers & role in ordinance adoption. Unless otherwise provided for by ordinance, the mayor is a full voting member of the municipal governing body without any special veto powers. An ordinance that provides for certain veto powers while removing general voting privileges from the position of mayor only may be adopted or repealed within the 60 days before a mayoral election.[45]

Any ordinance to remove the mayor's voting privileges as a member of the governing body must provide for the mayor to vote in the case of a tie vote on matters before the governing body. Such an ordinance also must provide that the mayor has the power to disapprove ordinances by a veto procedure.[46] Under these circumstances, all ordinances, resolutions authorizing the expenditure of money, and binding contracts must be presented to the mayor within 48 hours for approval and signature. If the mayor disapproves, the objections must be presented, in writing, at the next regular meeting of the governing body. After rejection by the mayor, legislation may take effect only if approved by a two-thirds majority of the governing body. Otherwise, the legislation takes effect when the mayor signs it. If the mayor neither signs nor formally objects to the legislation, then it becomes effective after the next regular meeting of the governing body.[47]

Other duties and responsibilities. In statutory cities not utilizing the council–manager structure, all officers of the city are subject to the control and direction of the mayor.[48] The mayor is specifically charged with the responsibility to supervise the conduct of all officers of the city; to investigate all reasonable complaints made against them; and to cause all cases of violation or neglect of duty to be corrected promptly or reported to the proper forum for punishment or correction.[49] Thus, even though the councilmembers, and sometimes the clerk and treasurer, are elected directly by the voters, the mayor is responsible for ensuring that cases of misconduct by these elected officials are handled properly. It should be noted that the terms "employee" and "officer" are not necessarily interchangeable and are subject to interpretation by the courts; legal counsel should be consulted when in doubt on this issue.

MUNICIPAL LEGISLATORS: THE OFFICES OF CITY COUNCILMEMBER AND TOWN TRUSTEE

The various problems inherent in the municipal legislative process, as well as methods for solving them, are discussed in Chapter Four. This section is devoted to the legal framework in which the municipal legislator must operate.

Nature of the offices. The positions of councilmember and trustee have been compared to those of the members of the Colorado General Assembly and the United States Congress. All of these positions require elected officials to represent their constituents, to make governmental policy decisions, to provide for financing the execution of the policies, and to supervise the administration of governmental affairs in accordance with these policy decisions.

The laws that govern city councilmembers and town trustees generally are similar. One difference is in the composition of the governing bodies. In statutory towns, the boards of trustees are composed of six members, unless the board by majority vote or the electorate at a general election determine that a board of four members would be advantageous to the town.[50] In statutory cities, the number of councilmembers is determined by an ordinance that provides for ward boundaries, with two members elected from each ward.[51]

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41 C.R.S. § 31-4-102(3); § 31-4-302.

42 C.R.S. § 31-4-102(2).

43 *Id*. These are the same powers that are conferred on county sheriffs.

44 *Id.*

45 C.R.S. § 31-4-102(3), § 31-4-302.

46 C.R.S. § 31-4-102(3), § 31-4-302.

47 C.R.S. § 31-16-104.

48 C.R.S. § 31-4-107(2)(b).

49 C.R.S. § 31-4-102.

50 *See* C.R.S. § 31-4-301, § 31-4-301.5.

51 C.R.S. § 31-4-104, § 31-4-105.

Qualifications to serve. Under Colorado statutes, a municipal legislator must be a registered elector of the town or city where office is sought; a resident within that municipality for at least 12 consecutive months (or a 12-month resident of more recently annexed territory); and at least 18 years old on the date of election unless some other age has been established by ordinance. The statutes further prohibit any person from being a candidate for or holding two elected municipal offices simultaneously. In addition to these requirements, city councilmembers must be residents of the ward from which that are running for at least 12 consecutive months prior to the election.[52]

Candidacy and election – General. The procedure for circulating and filing a nominating petition to run for councilmember or trustee is the same as that for becoming a candidate for mayor (see "candidacy and election" section), except that officers elected by ward must obtain nomination signatures only from electors within their wards. For officers elected in statutory cities, at least 25 signatures are required; for officers elected in statutory towns, at least 10 signatures are required.[53]

Candidacy and election – Councilmembers. All councilmembers in statutory cities under the mayor–council form of government are elected by wards, with two members from each ward. The governing body, by majority vote of all members, may change the boundaries of the wards. Boundary changes are limited to once every six years except to conform to constitutional apportionment requirements or to incorporate annexed territory.[54]

Tenure and term of office. Trustees and councilmembers are elected for either two-year terms[55] or four-year overlapping terms, if provided for by ordinance.[56] Such an ordinance must be enacted or repealed at least 180 days before the next regular municipal election and is subject to referendum by the voters.[57] Like mayors, to qualify for office, trustees and councilmembers must execute an oath or affirmation to uphold both the United States and Colorado Constitutions and, if the governing body requires, must execute a bond for the faithful performance of their duties.[58]

Under art. 18, sec. 11 of the Colorado Constitution, all nonjudicial elected officials of local government are limited to serving two consecutive terms in office (except, if the term of office is two years or shorter in duration, such officials are limited to serving three consecutive terms in office).[59] These term limits apply to all elected municipal officials, including trustees and councilmembers, in both statutory and home-rule municipalities. Terms are considered consecutive unless they are at least four years apart.[60]

The voters of a statutory city or town may modify or eliminate these term-limit requirements by approving a legislatively referred measure or initiative;[61] for the 144 Colorado cities that had attempted to eliminate or modify their term limits since 1995, 111 of the 191 total local "opt-out" elections have been successful.[62] Aside from the constitutional prohibition on number of *consecutive* terms, there are no statutory limits on the overall *number* of terms a municipal legislator may serve.

Vacancies. A vacancy on the governing body may occur in any of several ways: death, disability, resignation, removal, and failure to qualify. When a vacancy occurs before the expiration of the current term, the municipal governing body may fill the vacancy by appointment or election, until the term of office expires and the term of a successor, elected at the next regular municipal election, commences. If the governing body has not appointed a successor or called an election within 60 days after the vacancy occurs, it loses the opportunity to appoint and must order an election as soon as practical to fill the vacancy.[63] Presumably, appointments to fill ward vacancies must come from the ward with the vacancy to be filled, though the law is unclear on this point. [64]

Removal, resignation, and recall. For statutory towns, trustees may be removed by a majority vote of all the members of the board of trustees, for cause, if a charge or charges are made in writing and an opportunity for a hearing is given. If the trustee moves outside the corporate limits of the town, no written charge or public hearing is required; only a majority vote to remove is required.[65]

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52 C.R.S § 31-4-301, § 31-10-201, § 31-10-301.

53 C.R.S. § 31-10-301.

54 C.R.S. § 31-4-104, § 31-4-105,

55 C.R.S. § 31-4-105, § 31-4-301(2).

56 C.R.S. § 31-4-107(3), § 31-4-301(5).

57 *Id.*

58 C.R.S. § 31-4-401.

59 Colo. Const. art. XVIII, § 11.

60 *Id.*

61 *Id.*

62 *See* CML, Historical Municipal Elections Spreadsheet: Term Limits available at *www.cml.org/uploadedFiles/CML_Site_Map/_Global/pdf_files/election_term.pdf.*

63 C.R.S. § 31-4-106, § 31-4-108, § 31-4-303. *See also Rizer v. People*, 69 P. 315 (Colo. Ct. App. 1902).

64 *See, e.g.*, C.R.S. § 31-4-104, § 31-4-105, § 31-4-106.

65 C.R.S. § 31-4-307.

For statutory cities, councilmembers may be expelled or removed, for good cause, by a two-thirds majority vote of the members elected to the city council. A member may not be subjected to a vote for removal twice for the same offense.[66] If the councilmember moves out of the city or the ward he or she represents, the office is deemed vacant once the city council adopts a resolution declaring the vacancy.[67]

Both councilmembers and trustees may resign at any time, and such resignation is presumably effective upon its acceptance by the governing body at a meeting, as no official act may be taken outside official meetings of the governing body. Recall procedures for councilmembers and trustees are the same as that of mayors, except that voters and candidates for councilmember vacancy and recall elections are limited to voters in the ward represented.[68]

Compensation. Incumbent members of the governing body have no control over their own salaries but may adjust the salaries of the future governing body members if done no later than the last meeting prior to the regular municipal election. A person appointed to fill a vacancy assumes the same salary as the person being replaced. The statutes further provide that a person who has resigned from the governing body cannot be reelected or reappointed during the same term if the compensation for that position has been increased during the term.[69]

Although the statutes authorize compensation for councilmembers and trustees, many of these officials serve without compensation. The level of compensation varies greatly with the size, form of government, and conditions prevalent in the municipality. Some municipalities compensate on a per-meeting basis; others adopt a more traditional monthly approach. However accomplished, salaries must be set by ordinance.[70]

Attendance at meetings. Trustees and councilmembers are not required by statute to attend meetings of the governing body, although for cities, attendance by city councilmembers may be compelled by rules and penalties adopted by the council itself.[71] For towns, recourse in cases of chronic nonattendance may be limited to "removal."[72]

Duties. The main duty of trustees and councilmembers is to enact laws to govern the municipality. This is discussed further in later sections of this chapter. However, the appointment, administrative, and removal powers of the governing body are discussed in the following section.

THE MAYOR AND THE GOVERNING BODY

Cooperative relationships. All Colorado towns and most cities operate under the "weak–mayor" system of municipal government, although cities have the option of adopting the "council–manager" form of government.[73] In the weak-mayor system, almost every action taken by the municipality is subject to approval by the governing body, including the appointment and removal of officers; appointments to boards, commissions, and committees; and many administrative functions. The mayor retains little independent executive authority; therefore, both the mayor and the council or board of trustees must work together closely in the management of municipal affairs.

Because of this necessary close relationship in weak–mayor towns and cities, it is difficult to distinguish between those duties or actions that are the sole responsibility or duty of the mayor and those that are the sole responsibility of the governing body. Consequently, this section is limited to the legal framework within which this joint action takes place.

Mayor as a member of the governing body. As an initial matter, unlike "strong–mayor" systems, mayors of statutory municipalities in Colorado possess full voting powers within their governing bodies while serving as the presiding members, unless otherwise provided for by ordinance.[74]

Delegation of powers. The governing body of a weak–mayor municipality is delegated all of the legislative powers granted by Title 31 of the Colorado Revised Statutes, including responsibility for management responsibilities and financial control of the municipality.[75]

Appointment and removal of officers — statutory cities and towns. The boards of trustees of statutory towns are granted the power to appoint such officers as are either required by statute or as are needed for the "good government of the corporation." The boards are required to prescribe for them both their duties (when they are not described by statute) and their compensations and fees. Appointed officers also may be required to post bonds "for the faithful discharge of their

66 C.R.S. § 31-4-108.

67 C.R.S. § 31-4-106.

68 *See, e.g.,* C.R.S. § 31-4-104, § 31-4-105, § 31-4-106.

69 C.R.S. § 31-4-109, § 31-4-405.

70 *Id.* For more information and comparisons of different compensation packages offered to elected officials and officers of cities and towns statewide, see CML's compensation survey report at *www.cml.org/compensation.aspx.*

71 C.R.S. § 31-4-107(1).

72 C.R.S. § 31-4-307.

73 C.R.S. § 31-4-201 et seq.

74 C.R.S. § 31-4-102(3), § 31-4-302.

75 C.R.S. § 31-4-101, § 31-4-301(1).

duties," as well as to take oaths of office that the board shall prescribe. Statutory towns specifically are required to appoint a clerk, treasurer, and town attorney, although they may provide for the general popular election of these officers by ordinance if they so choose.[76] Other appointed officers specifically mentioned by statute but not required to be appointed include the town administrator and the marshal or chief of police.[77] In statutory towns, all appointed (and elected) officers other then municipal judges may be removed by a simple majority vote of all the members of the board, although no such removal shall be made without a charge in writing and an opportunity for a hearing, unless the officer moves out of the limits of the town.[78] Appointments made by the current board of trustees may not extend more then thirty days beyond the term of office of the current board.[79]

Likewise, statutory cities are given the power to appoint such officers as are required either by statute or as "may be necessary or desirable," and they are required to appoint a city attorney and one or more municipal judges in accordance with C.R.S. § 31-10-105(1).[80] Again, as with towns, other appointed officers specifically mentioned by statute but not required to be appointed include the city administrator and the marshal or chief of police.[81] There is an explicit statutory provision for cities allowing for one person to hold two or more appointive offices (if provided for by ordinance),[82] and as regards the city clerk and treasurer, C.R.S. § 31-10-301 specifically allows these offices to be held by the same person, even when both are elected positions.[83]

In a statutory city, city appointed officers are subject to the "control and direction of the mayor," and may be removed by a majority of the members of city council (if appointed to serve at the pleasure of the council) or by vote on charges of incompetence, unfitness, neglect of duty, or insubordination (if appointed to serve for a term prescribed by ordinance). The council also is authorized to create methods for administrative proceedings for removal for many positions.[84] As with statutory towns, municipal judges may be removed only for cause as outlined in C.R.S. § 31-10-105(2).

In statutory cities, although the position of the city clerk and city treasurer are, by default, elected positions,[85] the city council has the power to submit to the voters the question of whether the positions should be made appointive.[86] Should the voters approve the question, the council may always go back to the elective method for these positions by submitting to the voters the reverse question.[87]

Finally, all appointed officers are required by statute to take an oath to uphold the United States and Colorado Constitutions and, if the governing body directs, post bonds to ensure their faithful discharge of their duties.[88]

COUNCIL-MANAGER ORGANIZATION

GENERAL OVERVIEW

Form of government — Council-manager. Some cities prefer the division of responsibilities that a full-time manager system of government offers. Under Colorado law, statutory cities may organize under the "council–manager" form of government,[89] but such cities still have only "those rights and powers conferred upon cities by the general laws of this state."[90]

Unless otherwise provided in the specific state statutes governing council–manager cities, all laws governing mayor–council cities apply equally to council–manager cities.[91] The material in this handbook is applicable equally to both forms of statutory cities, unless specifically stated otherwise below. If any doubt concerning the applicability of a particular provision of the statutes to one form or another arises, elected officials should consult their city attorneys.

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76 C.R.S. § 31-4-304.

77 *Id. See also* C.R.S. § 31-4-306.

78 C.R.S. § 31-4-307. Municipal judges may be removed only for cause as outlined in C.R.S. § 31-10-105(2).

79 C.R.S. § 31-4-304.

80 C.R.S. § 31-4-107(2)(a).

81 C.R.S. § 31-4-107(2)(a), § 31-4-112.

82 C.R.S. § 31-4-107(2)(b).

83 C.R.S. § 31-10-301.

84 C.R.S. § 31-4-107(2)(b).

85 C.R.S. § 31-4-105.

86 C.R.S. § 31-4-107(4)(a).

87 C.R.S. § 31-4-107(4)(b).

88 C.R.S. § 31-4-401.

89 C.R.S. § 31-4-201 et seq. Statutory towns do not have this option. S*ee also* CML, FAQ: Forms of Municipal Government, Appendix A.

90 C.R.S. § 31-4-201.

91 *See* C.R.S. § 31-4-204.

Establishment and dissolution. To establish a council–manager government model, a petition requesting an election on the question signed by 5 percent of the registered voters in the city and presented to the city council is sufficient to require the city council to adopt an ordinance calling for an election on the issue. The election must then be held within four months, and the petition for the election must state the method of choosing the city's mayor.[92]

The election, whether held as a special election or as part of a general election, is governed by the general provisions of the Colorado Municipal Election Code, and the precise language of the ballot is prescribed by statute.[93] The proposal for the new form of government will pass if it receives a majority of all votes cast. The old form of government will then continue to function until the next regular election, at which time the officers required for the new form are selected in accordance with the terms of the successful proposal, and the new form commences when the new officers take office.[94]

Once the council–manager form of government is established, the electors of the city may either change the method of selection of the mayor or revert back to the mayor-council form of government by the above procedures at any time.[95] Note that since new officers may only be elected at a regular municipal election, changes cannot actually occur more frequently than every two years.[96]

POSITIONS

City manager. The city manager is selected and appointed for an indefinite term by the city council on the sole basis of his or her executive and administrative abilities. The manager does not have to be a resident of the city or the state when appointed.[97] No current member of the city council is eligible to be appointed as city manager.[98]

The city manager serves at the pleasure of the council, to whom he or she must answer, and may be removed or suspended pending removal, solely by the council. If this happens, the manager, upon request, has a right to be presented with a written statement of the reasons for his or her removal and an opportunity to be heard at a public meeting prior to a final vote by the council. The council may appoint an acting manager, having the same powers and responsibilities, who serves during the temporary absence or disability of the permanent manager.[99]

In the process of choosing a city manager, the city council may wish to consider the applicants' experience, education (including specialized public administration training and degrees), and adaptability to the city's situation.

The city manager is the chief administrative officer of the city[100] and is responsible directly to the city council for the performance of his or her duties.[101] Exclusive authority to appoint and remove all officers and employees — except the city attorney, judge, mayor, and mayor pro tem — is vested in the manager. The manger's appointments are all of indefinite duration and terminable for cause. The manager's decisions to appoint must be based on the ability, training, and experience of the applicants.[102]

Additionally, it is the duty of the city manager to present an "administration plan" to the council within 60 days of his or her appointment, which shall include an "administrative organization" for the city and which may be adopted in part or in whole by the council.[103]

The city manager also acts as the chief conservator of the peace, who supervises the administration of city affairs, ensures the enforcement of ordinances and laws, makes recommendations to the council, advises the council of the fiscal state of the city, prepares and submits the annual budget, prepares reports and monthly statements, and performs other such duties as directed by statute or the council.[104] The manager also is entitled to sit on the council as a full but nonvoting participant.[105]

The city council and its members must deal solely with the city manager for all aspects of administration for which the manager is responsible. The council may not direct or request, or otherwise influence, the appointment or dismissal of any

92 C.R.S. § 31-4-202(1).

93 C.R.S. § 31-4-202(1).

94 C.R.S. § 31-4-203.

95 C.R.S. § 31-4-202(4).

96 C.R.S. § 31-4-203.

97 C.R.S. § 8-2-120(1)(a).

98 C.R.S. § 31-4-210.

99 *Id.*

100 *Id.* There is a good deal of case law on the manger's power and discretion to remove appointed officers. CML recommends municipalities consult their attorneys immediately should disputes in this area arise.

101 C.R.S. § 31-4-211.

102 *Id.*

103 C.R.S. § 31-4-215.

104 C.R.S. § 31-4-213.

105 C.R.S. § 31-4-214.

officer or employee under the direction and control of the city manager. The council also may not give orders, either publicly or privately, to any officer or employee appointed by the manager.[106]

It is important that the manager be given a reasonable amount of freedom to carry out the city administration under guidelines furnished by the council. These guidelines usually take the form of budget considerations, creation or dissolution of departments, approval of personnel positions and wages, and such ordinances or resolutions as required by law to implement the function of government.[107] Many councils find it tempting to pass ordinances and resolutions dealing with minor administrative details as guidelines for a manager. An excessive number of such restrictions may prevent the manager from effectively doing the job for which he or she was appointed, i.e. managing the city.

Mayor. The position of mayor is vastly different in council–manager city governments from that in mayor–council governments. One of the differences is the selection process.

Statutory cities with a council-manager form of government have two options for selecting their mayors — either a councilmember may be selected by the rest of the council or the mayor may be elected through a popular election.[108]

The option chosen must be set out in the original petition to adopt a council–manager form of government, and the original election ballot also must clearly state the proposed method of mayoral selection.[109] Once established, however, the same petition process later may change the method of selection from "by and from among the members of the city council" to "from the city at large by a plurality of the votes cast for that office at the regular election," or vice versa.[110]

While the popular election procedures for mayors in council–manager governments are largely the same as in mayor–council governments, special provisions exist for the selection of a mayor by the city council. For council-chosen mayors, at the meeting when the terms of newly elected members commence, the council is directed to choose one of its members, by majority vote, to serve as chair of the council for a two-year term. A vice-chair also is chosen at this meeting in the same manner. These positions also bear the titles of mayor and mayor pro tem, respectively. If either office becomes vacant, the council may choose a successor to serve the remainder of the term.[111]

The city council can enact an ordinance to either change the term of office for the mayor from two to four years, or to reinstate two-year terms.[112] Any such ordinance must be enacted at least 180 days prior to a regular election. The city council may not, however, enact such an ordinance to extend or reduce the term for which the mayor has been elected.

Since almost all administrative duties and responsibilities in council–manager governments are vested in the city manager, the powers of the mayor are restricted greatly. Nevertheless, she or he remains a full voting member of the city council, as well as its presiding officer. The mayor is also the ceremonial head of government and the legal head of government purposes of for civil process and military law. Additionally, the mayor may have other powers conferred upon him or her by state law or city ordinance.[113]

City councilmembers. With a few exceptions, both the selection process and the powers of councilmembers are the same under both the mayor-council and council-manager forms of government.

The requirements and qualifications for councilmembers are the same. Councilmembers may be elected to two-year terms or four-year overlapping terms, if provided for by ordinance. The only difference in the selection processes is in the number of councilmembers. In both forms, two councilmembers are elected from each ward, but in council–manager governments, an additional at-large councilmember is elected. Tenure, vacancy, removal, and compensation rules and procedures are the same for councilmembers under both forms of government,[114] with the exception that the laws for the council–manager governments make it clearer that vacancies, when filled by appointment, must be filled from the ward that is to be represented.[115]

As with the mayor, the city council retains all of its legislative authority under the various council–manager forms of government, but its administrative role is restricted greatly. Indeed, the statutes specifically dictate that the council is "not to interfere" with any of the manager's administrative duties, and that any such meddling may constitute punishable misconduct.[116]

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106 C.R.S. § 31-4-212.

107 *See generally* C.R.S. § 31-4-215.

108 C.R.S. § 31-4-217.

109 *See* CML, FAQ: Forms of Municipal Government, Appendix A.

110 C.R.S. § 31-4-202(1), § 31-4-203.

111 C.R.S. § 31-4-207.

112 C.R.S. § 31-4-207(3).

113 C.R.S. § 31-4-207.5.

114 C.R.S. § 31-4-205, § 31-4-206, § 31-4-209.

115 *Compare* C.R.S. § 31-4-205(2)(a) with § 31-4-108(2)(a).

116 C.R.S. § 31-4-212.

GOVERNMENT FUNCTIONING AND COOPERATION

Since the mayor's role, other than as a councilmember, is restricted greatly, the key concern in council–manager governments is the city manager/city council relationship and their respective statutory duties.

While the council appoints and retains the full power of removal over city managers, it must at the same time delegate almost all administrative power to the manager.[117] The council may not interfere with the administrative duties of the manager[118] — the manager answers only to the council,[119] and the council is accountable only to the electorate.

In return for the administrative powers delegated to the manager, she or he is directed to provide various forms of assistance to the council to aid in its legislative decision-making process.[120]

Besides the various powers granted to the manager, the statutes provide another tool for councils and managers to increase the effectiveness of their government: the administrative plan.[121] The creation of this plan is a cooperative effort of the manager and the council, with the manager reporting and recommending a plan and the council modifying and adopting it by ordinance. The plan must provide for a city clerk (who also serves as the ex officio treasurer), a police chief, a fire chief, a health officer, and other officers, departments, and department heads as are found to be necessary.[122]

The council retains the sole power to appoint the city attorney and city judge(s).[123] It also retains the power to set the salary and compensation ranges by grade for officers and employees, although the manager may grant compensation changes within the range set by the council "upon the basis of efficiency and seniority."[124]

Elected official liability. Understanding the role of municipal official is essential to good governance. Municipal officials have personal protection from liability under the Colorado Governmental Immunity Act, which applies to elected officials, appointed officials, employees, and even volunteers, so long as their actions are within the scope of employment and not done willfully and wantonly.[125] Misunderstanding the role, acting outside of the scope of responsibilities, or performing responsibilities recklessly can increase the risk of potential liability for the municipality and for the official.[126]

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117 C.R.S. § 31-4-210.

118 C.R.S. § 31-4-212.

119 C.R.S. § 31-4-210.

120 C.R.S. § 31-4-211, § 31-4-213, § 31-4-215.

121 C.R.S. § 31-4-215.

122 *Id.*

123 C.R.S. § 31-4-208. While the city attorney serves at the pleasure of the council, the municipal judge only may be removed "for cause." *Id*. Home rule municipalities can have different requirements.

124 C.R.S. § 31-4-218.

125 C.R.S. § 24-10-106.

126 *See* CML's *Public Officials Liability Handbook* (2007) for additional information on liability.

CHAPTER THREE:
THE ROLE OF THE GOVERNING BODY

MUNICIPAL LEGISLATIVE ACTS

ORDINANCES, RESOLUTIONS, AND MOTIONS

Ordinances. Elected officials occasionally have difficulty determining what form certain official actions should take, and whether certain official acts would best be performed by a the enactment of an ordinance, resolution, or motion.

In general, an ordinance, with its clearly defined legal requirements, is considered the highest and most authoritative form of action that a governing body can take. An ordinance is intended to be the permanent law of the municipality, although it can, of course, be repealed by future ordinances, referenda, or initiatives. Statutes require that most actions by municipal legislatures comply with the statutorily mandated procedures for enacting valid ordinances.

Municipal codes. Several Colorado municipalities have enacted "codes" that contain all of the general and permanent laws in effect in the municipality. Private firms or individuals usually undertake the process of "codification," although some smaller towns have given this responsibility, and the responsibility of periodically updating existing copies of the code, to the office of the town clerk. Whether outsourced to a company or done by a municipal employee, in either case the codifier organizes the ordinances into an orderly and concise code, and the governing body then enacts the code as the official law of the municipality. Once the official code is enacted as the governing law of the municipality, the original ordinances should be repealed.[1]

The advantages of adopting a code are numerous. Codes are more readily accessible to citizens, allowing them to locate most of the important laws that affect their community in a single book or document file that can be placed online. In this way, for both citizens and other interested parties alike, codification of local laws helps simplify the complex research that otherwise would be necessary just to know what the law is.

In contrast, merely compiling ordinances without sorting, indexing, evaluating, and — when appropriate — rewriting their provisions, may not be worth the time and expense involved. Instead, good municipal codes should be carefully organized and thoroughly indexed. Care should be exercised in both determining the format of the code, as well as in selecting the party responsible for preparing it.

Resolutions. Resolutions are legislative enactments that lack the formal requirements mandated for ordinances. The general rule is that, while ordinances are used to enact laws of a general and permanent nature, resolutions are used to accomplish acts of a comparatively temporary or transient character. Resolutions may suffice for administrative or executive matters (such as setting annual fine schedules), or for statements of general policy.

In Colorado, state statutes do not provide any requirements for the form or procedure for enactment of resolutions; therefore, no title or number is required for their passage nor must they be published unless, in a home rule municipality, the charter or ordinances provide otherwise. However, because resolutions are still official actions of the governing body, they only may be adopted by a majority of those voting at regular or special meetings at which a quorum is present. It is customary, but not required, for the mayor to sign all resolutions, and unlikely that a mayor would veto any resolutions.

Legal counsel should be consulted whenever there is a question concerning whether to accomplish a specific desired act by ordinance or resolution.

Motions. Motions already have been discussed as the method by which to bring any matter for consideration before the governing body — including ordinances and resolutions. However, in cases in which the formality of neither an ordinance nor a resolution is needed, a motion approved by the governing body and duly recorded in the minutes of the meeting may serve certain purposes. Examples of purposes that may be accomplished by motion include routine acknowledgments of communications, authorizations for temporary absences requested by certain officers or employees, and giving directions to municipal staff. While ordinances and resolutions customarily are written out in advance of the meeting, motions are not presented in writing ordinarily.

ORDINANCE PROCEDURES AND REQUIREMENTS

Municipal ordinance power. Official municipal law is enacted by the governing body through the introduction and passage of ordinances. As such, ordinances represent the most formal type of action a municipal governing body can take.

In the exercise of the ordinance power, however, municipalities must comply with certain procedural requirements; failure to meet these requirements makes the ordinance void.[2]

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1 Codes must be distinguished from "compilations," which are merely collections of existing ordinances in single volumes without revision, reclassification, or reenactment.

2 *See, e.g., Inland Util. Co. v. Schell*, 285 P. 771, 775 (Colo. 1930).

The municipal ordinance power is granted to governing bodies by state statute:

> *Municipalities shall have the power to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state.*[3]

Additionally, "[t]he governing body of each municipality has power to provide for enforcement of ordinances adopted by it by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment."[4]

Requirements for valid ordinances. An ordinance may be ruled invalid because its subject matter is in conflict with the state or federal constitution, or because it attempts to exercise powers not authorized by the state legislature or in conflict with state laws.

Additionally, all ordinances also must be "reasonable" and must be enacted in accordance with statutory provisions.[5] When challenged, whether an ordinance is reasonable (as opposed to being arbitrary or capricious) is ultimately a matter to be resolved by the courts, and a discussion of this subject is beyond the scope of this handbook. However, generally speaking, the courts have held that governing bodies are presumed to be acting in good faith when they enact ordinances, and the burden of proving an ordinance unreasonable will rest with the person challenging the ordinance, and not the municipality.[6]

On a larger scale, the Fourteenth Amendment of the United States Constitution places two general restrictions on the lawmaking powers of states and their local governments. First, to meet the requirements of providing all citizens with due process of law, all ordinances must, as an initial matter, meet judicially determined baseline standards of reasonableness or "fairness." The Fourteenth Amendment also requires that all citizens be afforded equal protection of the law. This means that a municipality cannot discriminate arbitrarily against one or more groups of people without at least having some kind of "rational" policy basis for doing so. Again, determining what and when a "rational basis" or more may be required is a legal question, and municipal governments are strongly encouraged to consult their attorneys when any kind of "discriminatory" policy may be warranted.

Another general rule is that a legislative body may not use ordinances to wholly delegate its legislative power to enforcing officials or municipal employees. At the same time, however, municipal governing bodies may act by ordinance to establish specific standards of conduct or policy that lower administrators or employees must follow in creating specific standards or policies, and then confer authority to establish the details and carry out the administration of legislative policies to its lower officers and employees.[7] Indeed, providing guidelines and delegating some specific, specialized administrative duties often will help the governing body in managing its responsibilities and in defending the propriety of any delegations of power it may choose to make.

Finally, any ordinance must be written clearly and precisely so that the intent of the governing body is discernible in the language of its laws. Any ambiguous or vague ordinance language might be declared void if challenged in court. In this regard, definitions may be essential whenever a word in an ordinance is intended to mean something other than its usual meaning, when it may be arguably ambiguous, or different meanings can be ascribed to a single word or phrase. Additionally, state statutes applicable to specific types of ordinances or realms of subject matter should be reviewed to determine whether any specific requirements for adoption of specific kinds of ordinances exist.[8]

Naturally, all ordinances must be published in compliance with statutes after adoption.

Proper form. There are certain basic elements in the form of an ordinance. The ordinance begins with the title that expresses, in a few words, the scope and nature of the particular ordinance. It is followed by the "enacting clause," which must read, "Be it ordained by the city council or board of trustees of ... "[9]

The body of the ordinance then will contain the substantive provisions of the ordinance itself, and this part must comply with the requirements discussed in the preceding section. If the governing body deems it necessary that the ordinance take effect after passage rather than after 30 days, it must include an "emergency clause" declaring that the ordinance "is necessary to the immediate preservation of the public health or safety," and containing the reasons why it feels that this is true. Such a declaration also will have the effect of preventing the ordinance from being repealed by referendum.

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3 C.R.S. § 31-15-103.

4 C.R.S. § 31-16-101. Note: At the time of publication, HB 13-1060 has been introduced in the Colorado General Assembly to raise the municipal court fine to $2,650 and to continue to index the fine annually by the consumer price index.

5 *See, e.g., Moffit v. Pueblo*, 133 P. 754, 755 (Colo. 1913).

6 *Colorado Postal Tel. Co. v. Colorado Springs*, 158 P. 816, 818 (Colo. 1916).

7 *See generally* McQuillin, Mun. Corp. § 12.67 (3d ed. 1996).

8 *E.g.,* requirements for public hearings in the case of zoning ordinances and rezoning.

9 C.R.S. § 31-16-102.

Following the body or the safety provisions, it usually is desirable for governing bodies to include a severability clause that provides that if one or more of the provisions of the ordinance are declared void for some reason by a court, all *other* provisions are to remain effective.

After being drafted and passed, the mayor and the clerk authenticate the ordinance by signing it, and the municipal seal is placed upon it.

Municipalities often use model ordinances or adopt ordinances that originated in another municipality. When doing so, governing bodies should be especially careful in using ordinances enacted by municipalities in other *states*, since procedural and substantive legal requirements and relevant state statutes may be different.

Whatever the source of the ordinance, the municipal attorney always should be asked to review proposed ordinances for legal sufficiency and potential conflict before its enactment.

Procedure for adoption. The following procedures generally are used to adopt ordinances and are based upon pertinent statutes and commonly accepted practices, although special procedures may be set forth in the statutes for adopting certain types of ordinances. When in doubt, the League suggests that elected officials consult the municipal attorney.

1. The municipal attorney should write or review the ordinance, based on official's descriptions of what they would like to see it accomplish.
2. The governing body will place the ordinance on the agenda of its next regular or (if necessary) special meeting.
3. At the meeting, a member of the governing body will introduce the proposed ordinance.
4. The municipal clerk will read the title of the ordinance if a written copy has been provided to each member of the governing body; and, if no written copies have been provided, the entire ordinance must be read.[10]
5. The governing body may then take any of the following actions:
   a. Approve the proposed ordinance (which may be done by voice vote, provided the votes are recorded) following any desired debate. For an ordinance requiring two readings, the body must then set the time for the second reading).
   b. Refer the proposed ordinance to an official or a committee for study and recommendation.
   c. Defeat the proposed ordinance.
6. If approved, the ordinance must be recorded in a book "kept for that purpose," and the ordinance must be published in a newspaper of general circulation. If, and only if, no newspaper of such general circulation exists within the municipality, the ordinance may instead be posted in three public places.[11]
7. Finally, to become effective, an ordinance must:
   a. For towns, unless of a type specifically regulated differently,[12] ordinances require only one reading and become effective 30 days after publication.[13]
   b. For cities, two readings of each ordinance are required. The ordinance must be published once in full after the first reading and at least 10 days before the second reading. After second reading, the ordinance must be republished, but such republication may be limited to merely the title and amendments made since first reading. For cities, ordinances become effective 30 days after the second publication.[14]

Mayor's veto or approval. A mayor no longer has the power to veto an ordinance unless the governing body has chosen to restore that power. Where a municipality has restored the mayor's veto power, an ordinance passed by the council must be presented to the mayor within 48 hours for his or her signature; if the mayor disapproved the ordinance, the mayor may return it to the governing body at its next regular meeting, together with his or her objections in writing, and those objections must be recorded in the minutes of the meeting. The members may then vote whether to pass the ordinance over the mayor's veto. If two-thirds of all the members elected to the governing body vote to pass the ordinance notwithstanding the mayor's objections, the ordinance then becomes law. If the mayor fails to return the ordinance to the next meeting of the governing body it shall become a valid ordinance as if he or she had approved it.[15]

Publication. Whenever an ordinance is adopted, it must be recorded in a book kept for that purpose and authenticated by the presiding officer of the governing body and the clerk.[16] All ordinances of a general or permanent nature, and those imposing any fine, penalty, or forfeiture, must be published in a newspaper published within the municipality or, if there is none, in a newspaper of general circulation within the municipality. If there is no newspaper published or that has general

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10 While this procedure is required for statutory cities, it is merely recommended for statutory towns. *Compare* C.R.S. § 31-16-106 with § 31-16-107.

11 C.R.S. § 31-16-105.

12 *See, e.g.,* C.R.S § 31-16-201 et seq. (regarding adopting codes by reference); C.R.S. § 31-32-103 (regarding granting franchises).

13 C.R.S. § 31-16-105.

14 C.R.S. §§ 31-16-105 to 31-16-106.

15 C.R.S. § 31-16-104.

16 C.R.S. § 31-16-105.

circulation within the limits of the municipality, the governing body may, by resolution, direct that copies of the ordinance be posted in at least three public places within the municipality to be designated by them.[17]

In statutory cities, if the initial publication following an ordinance's introduction was in a newspaper, then the requirement of subsequent publication after adoption may be met by publishing the title only if in the same newspaper and containing the date of the initial publication. However, any section, subsection, or paragraph that was amended after the initial publication must be reprinted in full.[18] Also, electors of any municipality may vote to publish all ordinances by title only rather than by publishing the ordinance in full should they so desire.[19] This action tends to save the town or city publishing expenses and is being utilized more and more frequently, especially considering the ease with which municipalities are able to "publish" the text of ordinances at no expense to town and city websites.

Effective date. The effective date of an ordinance will depend on the type of ordinance at issue. If an ordinance calls for a special election or is necessary for the immediate preservation of the public health or safety and includes the reasons for the necessity in a separate section, it takes effect immediately after adoption by an affirmative vote of three-fourths of the governing body.[20]

If, however, an ordinance has been adopted pursuant to § 31-4-102(3) (in statutory cities) or § 31-4-302 (in statutory towns) restoring the mayor's veto power, then subsequent ordinances only can take effect after compliance with the provisions for the mayor's approval.[21]

In ordinary cases where the mayor's veto power has not been restored, nonemergency ordinances take effect no sooner than 30 days after the publication following the governing board's adoption.[22]

Finally, in all cases, if a valid referendum petition is filed with the clerk within 30 days after publication of a nonemergency ordinance, the ordinance's date of effect will be suspended immediately pending repeal by the governing body or a vote by the electors of the municipality.[23]

Required number of votes for ordinance passage. The number of votes required for approval of an ordinance depends on the provisions under which it is enacted. Ordinances enacted under emergency provisions (mentioned above) or that call for a special election require approval by three-fourths of all the members elected to the governing body.[24] Ordinances, resolutions, and orders for the appropriation of money require the concurrence of the majority of the total number of board or council members.[25] All ordinances enacted without an emergency clause require merely approval by a majority of the members of the governing body present and voting at valid meetings where a quorum is present.[26] In municipalities that have restored the mayor's veto power, any ordinance passed over the veto of the mayor must receive approval of two-thirds of the members of the governing body before it becomes law.[27]

ADOPTION OF CODES BY REFERENCE

Basic requirements. In Colorado, municipalities may adopt existing published codes "by reference"[28] (that is, without full publication) by adopting an ordinance. Codes that are eligible for adoption by reference are "any published compilation of statutes, ordinances, rules, regulations or standards adopted by the federal government or the State of Colorado, by an agency of either of them, or by any municipality or other political subdivision in this state."[29] In most instances, the code to be adopted may be altered by the municipality in the process, by adding or excluding specific provisions to make the code meet the municipality's particular needs. However, no penalty clauses may be adopted by reference; all penalty provisions must be set forth separately and in full in the adopting ordinance.[30]

One common arena in which this procedure commonly is used is in connection with the adoption of detailed and common regulatory codes such as building codes, electrical and plumbing codes, traffic codes, etc. Another common use of this

17 C.R.S. § 31-16-105.
18 C.R.S. § 31-16-106.
19 C.R.S. § 31-16-105.
20 C.R.S. § 31-11-105(1).
21 C.R.S. § 31-16-104.
22 C.R.S. § 31-16-105.
23 C.R.S. § 31-11-105(3).
24 C.R.S. § 31-11-105(1).
25 C.R.S. § 31-16-103.
26 *Id.*
27 C.R.S. § 31-16-104.
28 *See* C.R.S § 31-16-201 et seq.
29 C.R.S. § 31-16-201(2).
30 C.R.S. § 31-16-204.

procedure is in the adoption of the codification of a municipality's ordinances. Clerical, organizational, and other insubstantive changes to the proposed code do not have to be published.[31]

Hearing required. Whenever a municipality intends to adopt a code by reference, the governing body is required to conduct a public hearing. The hearing must be scheduled after the introduction of the adopting ordinance, and notice of the hearing must be published twice in a newspaper of general circulation[32] —once at least 15 days before the hearing date and once again at least eight days before the date of the hearing.[33]

The notice of hearing must include all of the following: time and place of the hearing; a statement that copies of the primary code and any secondary codes are on file with the clerk and are open for public inspection; a description sufficient to give notice of the purpose and subject matter the code; the full name and address of the agency or municipality originally compiling and publishing the code; and the date of publication of each code.[34]

Copies of the code. At least one copy of each primary and secondary code, all of which must be certified as true copies by the mayor and the clerk, must be kept on file for public inspection with the clerk for at least 15 days prior to the public hearing and as long as the ordinance remains in force. The only exception is that the copy of the code may be kept on file in the office of the chief enforcement officer (for example, a building code could be kept in the building inspector's office) once the code has been adopted.

In addition, the clerk of the municipality must keep on hand a reasonable supply of copies of the code during the period the code is in force. These copies must be available to the public for purchase at a "moderate price."[35]

INITIATIVE AND REFERENDUM

Overview. One feature of law and ordinance-making in Colorado and several western states is the initiative and referendum procedure. In addition to ordinances proposed and adopted by the governing body, municipal voters may propose ordinances by petition. In addition, after an ordinance is passed by the governing body, local citizens also may require, through a referendum petition, that they be given an opportunity to have a popular vote on the ordinance before it becomes law. Both of these rights are guaranteed in art. V of the state constitution and regulated by state law.[36]

Initiated ordinances. The "initiative" process permits citizens to propose their own ordinances if they feel that the governing body is failing to meet their needs and desires or otherwise refusing to act in accordance with their wishes. Such proposed "initiated" ordinance drives ("initiatives") either require the governing body to adopt the proposed ordinance or to refer it to voters for a popular vote at a municipal election.

The first step in the initiative process is submission by an interested citizen of written notice of the proposed ordinance to the city clerk or other election official. After the clerk approves the proposed ordinance,[37] a period of 180 days begins during which the initiative petition must be signed by at least 5 percent of the total number of the municipality's registered electors and then filed with the clerk.[38]

Assuming the signatures are gathered and approved by the clerk, the proposed ordinance (without alteration(s)) must then either be adopted by the governing body within 20 days,[39] or referred to the a popular vote at a regular or special election. This election must be held at least 60 days but not more than 150 days after the petition finally is determined to be sufficient.[40]

Alternate ordinances may be submitted to the electorate at the same time at the same election. In such cases, if more than one such ordinance is approved, the one receiving the most votes controls in all provisions that conflict with other measures approved in the same election.[41]

Referred ordinances. The "referendum" process provides citizens with a "final say" on an certain ordinances that they may feel to be of questionable merit. Through the power of referendum, the citizens, by petition, may demand that

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31 *See id.*

32 Or, if there is no newspaper, notice must be posted as discussed previously.

33 C.R.S. § 31-16-203, § 31-16-205.

34 C.R.S. § 31-16-203.

35 C.R.S § 31-16-206.

36 Colo. Const. art. V, § 1; C.R.S. § 31-11-101 et seq.

37 For approval criteria and procedures, see C.R.S. §§ 31-11-108 to 31-11-110.

38 C.R.S. § 31-11-104(1).

39 Or, if vetoed by the mayor, adopted by a two-thirds majority within ten days following such veto. *Id.*

40 C.R.S. § 31-11-104(1). If a scheduled regular election happens to fall within this time frame, then the initiative may be added to the existing regular election ballot. If not, a special election must be called. See *id.*

41 C.R.S. § 31-11-104(2).

"nonemergency" ordinances be repealed and, if the governing body fails to repeal the ordinance, it must then refer the measure to a popular vote of the entire municipal electorate.[42]

A referendum election may be required whenever a proper referendum petition is filed with the clerk and the governing body refuses to repeal the ordinance in question upon reconsideration. Sufficient petitions must be signed by at least 5 percent of the total number of the city's registered electors who were registered on the date of the final publication of the ordinance, and the petition must be filed within the 30 days following this final publication.[43] Such a filing, if successful, automatically suspends the ordinance from taking effect.[44]

Once filed, the clerk's duty is to then evaluate the petition for sufficiency. If the clerk finds that the petition is insufficient, or if the petition is declared insufficient after a protest, the ordinance will become effective unless otherwise provided therein.[45] However, if the clerk finds the petition sufficient and the ordinance is not repealed by the governing body upon reconsideration, the ordinance must be placed on the ballot at a regular or special election held at least 60 days but not more than 150 days after the petition is finally determined to be sufficient.[46]

MUNICIPAL ELECTIONS

REQUIREMENTS AND PROCEDURES

Types and timing of elections. Regular municipal elections, for the purposes of selecting mayors, councilmembers, trustees, clerks, treasurers, and any other elected municipal officials, are scheduled by state law and are held on the first Tuesday of November during each odd-numbered year. In towns, these regular elections are held on the first Tuesday of April in each even-numbered year.[47] Colorado's cities and towns also may change their "regular election" dates to early November, in accordance with C.R.S. § 31-10-109[48]

Additional elections, referred to as "special elections," may be called and held on most Tuesdays throughout the year other than the "regular election" time, whether for initiative and referendum elections or "for the purpose of submitting public questions or proposals."[49] However, the Taxpayer's Bill of Rights (TABOR — art. X, sec. 20 of the Colorado Constitution) sets certain limits on the election dates for consideration of various fiscal issues.[50] Sec. 20(3)(a) of the amendment requires "ballot issues" to be submitted to the voters only on three specific election dates.[51] These dates are: the local government biennial election date; the state general election date; and the first Tuesday in November of odd-numbered years.[52] Unless a mail ballot is used, regular and special elections held in November often will be coordinated under the direction of the county clerk.[53] For more information on regular, special, and coordinated elections, readers should refer to CML's *The Election Book*.[54]

The municipal election law. The Colorado Municipal Election Code of 1965 governs the conduct of municipal elections,[55] except those conducted by mail ballot or in concert with other jurisdictions as coordinated elections.[56] While a great deal of the responsibility for the conduct of the elections rests with the clerk, the governing body also has certain responsibilities in municipal elections.

As an initial matter, the city council is required to divide the city into as many municipal election precincts as it may deem expedient for the convenience of the voters, and municipal precincts must consist of one or more whole general election (county) precincts wherever practicable. By statute, changes in the boundaries of election precincts or the creation of new election precincts must be completed, by resolution, at least ninety days prior to any election, except in cases of precinct

42 C.R.S. § 31-11-105.

43 C.R.S. § 31-11-105(2).

44 C.R.S. § 31-11-105(3).

45 C.R.S. § 31-11-105(3). For criteria of sufficiency and protest, *see* C.R.S. §§ 31-11-108 to 31-11-110.

46 C.R.S. § 31-11-105(4).

47 C.R.S. § 31-1-101(10)(a).

48 C.R.S. § 31-1-101(10)(b).

49 C.R.S. § 31-1-101(11).

50 Colo. Const. art. X, § 20.

51 The General Assembly has defined "ballot issue" for the purposes of TABOR as including tax, spending, and debt matters. *See* C.R.S. § 1-41-101 et seq. This interpretation was upheld by the Colorado Supreme Court in *Zaner v. Brighton*, 917 P.2d 280 (Colo. 1996). For further information relating to TABOR and TABOR issue elections, see CML, *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

52 Colo. Const. art. X, § 20(3)(a).

53 *See* C.R.S. § 1-7-116(a).

54 CML, *The Election Book* (2011).

55 C.R.S. § 31-10-101 et seq.

56 *See* C.R.S. § 1-1-102.

changes resulting from annexations. The council or board also must change any polling place upon petition of a majority of the registered electors residing within the precinct. Both precinct boundaries and voting places remain the same until actively changed, so that they need not be redesignated for each election.[57]

The council (or the city clerk if the council has by resolution delegated to the clerk the authority and responsibility therefore) must appoint the election judges at least 15 days before each city election. At least three election judges and such additional judges as deemed necessary shall be appointed.[58] Other council responsibilities include providing materials and equipment for the conduct of elections[59] and, if voting machines or electronic voting systems are to be used, their use must be authorized specifically by the city council.[60]

OTHER ELECTION CONSIDERATIONS

Political party participation in municipal elections. The Municipal Election Code requires that all candidates for municipal office shall be nominated by petition without regard to political party affiliation.[61] The clerk is then responsible for prescribing the order, by lot, in which the candidates names appear on the ballot under the designation of each office.[62] While these requirements cannot prevent political party activity in local elections, most municipal elections in Colorado are conducted without formal participation by political parties.

ACCOUNTING FOR EXPENDITURE OF PUBLIC FUNDS

STATUTORY REQUIREMENTS

The "right to know." The residents of a municipality have the right to know how their elected representatives are conducting the public business. Several methods of keeping the governing body accountable to the public are provided by state statute, including requirements that public business be transacted only at open meetings,[63] that ordinances be enacted in an orderly and uniform manner,[64] that regular elections be held,[65] and that all municipal records (with certain exceptions) be open for public inspection.[66]

Public officials also must comply with an additional requirement — financial reporting (or reporting to taxpayers how their money is spent). Financial reporting is more than just a way to check on the honesty of public officials. As municipal government has expanded and become more complicated, financial reporting has become an integral part of the whole management process. Detailed accounts of how public money is spent must be furnished to administrative officials at all levels, to the governing body and to the people. Budgets, audits, internal checks, and other means of controlling expenditures have become part of the routine of managing municipal financial affairs.

Financial reporting requirements. Under Colorado law, municipalities must publish annual statements of financial condition,[67] notices of the annual budget hearing,[68] and annual appropriations ordinances.[69] Title 29, art. 1, part 6 of the Colorado Revised Statutes provides that yearly audits — or, for some municipalities, yearly reports on financial affairs — must be made.

In addition to these requirements, unless their citizens vote to authorize them not to, the governing bodies of each municipality less than 10,000 in population must publish "such of their proceedings as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed, and to whom paid" in a newspaper of general circulation within the municipality within 20 days after the adjournment of the meeting at which the payment was approved.

However no totals are required, nor is there any requirement to compare actual expenditures with either the budgeted funds or actual revenues.[70]

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57 *See generally* C.R.S. § 31-10-502.

58 *See generally* C.R.S. § 31-10-401 et seq.

59 C.R.S. § 31-10-504.

60 C.R.S § 31-10-701; § 31-10-801 et seq. Again, for more information generally on the municipal election code and municipal elections, see CML, *The Election Book* ((2011).

61 C.R.S § 31-10-302(1).

62 C.R.S. § 31-10-902(2).

63 C.R.S. § 24-6-402.

64 *See generally* C.R.S. § 31-16-101 et seq.

65 *See* C.R.S. § 31-1-101(10).

66 C.R.S. § 24-72-201 et seq.

67 C.R.S. § 31-20-304.

68 *See* C.R.S. § 29-1-108(1).

69 C.R.S. § 31-16-105.

70 C.R.S § 31-20-202. However, "any city or town subject to this [requirement] may determine at a regular or special election not to publish their proceedings ... [and] [a]ny city or town whose citizens elect not to publish may provide for an alternative for distribution of the information." C.R.S. § 31-20-202(1.5).

The statute also requires that municipalities publish a statement concerning all contracts awarded and rebates allowed, and that any mayor or member of the governing body who fails or refuses to make such a publication is subject to a fine of from $25 to $300, in addition to the cost of the suit for each offense.[71]

OTHER WAYS TO INFORM THE PUBLIC

Annual reports. Many municipalities have chosen to supplement the information in the above-mentioned financial reports by preparing and distributing an annual report. Publication of an annual report offers municipal officials an opportunity not only to summarize expenditures on different projects and activities, but also to outline projects completed or under consideration, to discuss financial and other problems, and to explain why certain facilities and services cost what they do. Some municipalities refer to such publications as "annual progress reports."

Formats used by different municipalities vary considerably. Some use a booklet or magazine report, while others use a folder or several mimeographed sheets. The "newspaper" report has become an increasingly popular device, since some municipalities have designed and distributed the report as a special section or Sunday supplement to the local newspaper.

However, whatever form and regardless of how effective, elected officials in statutory towns and cities under 10,000 people whose citizens have not voted to relieve themselves from these duties should be aware that no "supplementary" report or annual report they may cause to be published will relieve them of the statutory requirement that they publish a line-by-line account of each expenditure the city or town makes each month in their local newspaper.[72]

71 C.R.S. § 31-20-202.

72 For more information on what may constitute a "newspaper," *see* C.R.S. § 31-20-202(2).

CHAPTER FOUR:
POWERS AND AUTHORITY OF THE GOVERNING BODY

EXCERCISING CORPORATE POWERS

The governing body may exercise a number of powers in carrying out the public business. This chapter will discuss some of the powers.

Inherently, the powers of the municipal governing body are limited. Statutory municipal corporations, as creatures of the state, ultimately are dependent upon the state legislature for a delegation of their powers. Not only is there "no purely private right to have any particular area invested with the powers of municipal government"[1] but it "is fundamental that municipalities do not have inherent authority to enact legislation[;] [s]uch authority is dependent upon the authority granted by the constitution and general assembly of the jurisdiction."[2] The state legislature has absolute control over the number, nature and duration of the powers conferred and the territory over which they are to be exercised, and the legislature may qualify, enlarge, abridge or entirely withdraw the powers of a municipal corporation at its pleasure.[3]

This does not necessarily mean that statutory municipalities possess only the powers specifically stated in the statutes, however. There are other powers necessarily or fairly implied in or incident to the powers expressly granted, and also certain powers essential to the declared object and purpose of the corporation that may be exercised by the municipality.[4] Additionally, municipalities have all "the powers, authority, and privileges granted [under state law], together with such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to the exercise thereof."[5] Of course, all ordinances made in pursuance of such powers, authority, and privileges must be consistent with state law and must be "necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof."[6] Indeed, statutes granting powers to municipalities are construed strictly, and if a doubt exists as to a municipality's power to act in a certain field, that doubt usually is resolved against the municipality.[7]

When conflict arises between states and their municipalities, the U.S. Supreme Court has upheld the states' power, saying, for example, that a "municipal corporation created by a state for the better ordering of government has no privileges or immunities under the federal Constitution which it may invoke in opposition to the will of its creator."[8]

Despite its broad powers, the state legislature also remains subject to federal and state constitutional limitations in its control over municipalities. Art. V of the Colorado Constitution, for example, prohibits the General Assembly from imposing special restrictions or passing special or local legislation that would affect only a single city or town.[9] The legislature also is prohibited from imposing local taxes on local residents for local and municipal purposes.[10]

Many of the powers granted to municipalities are outlined in title 31, art. 15; more than 100 different grants of power are enumerated in that article. Powers also are granted in other articles, and the statutes should be consulted to determine powers on specific subjects. The following sections briefly outline some of the more important and common powers.

MUNICIPAL FINANCES

THE TABOR AMENDMENT CAVEAT

In November 1992, Colorado voters adopted the Taxpayer's Bill of Rights (TABOR) as an amendment to the state constitution.[11] TABOR revolutionized municipal finance in Colorado by imposing a variety of limitations and election requirements on municipal decisions relating generally to revenue and taxation; spending; and multiple-year fiscal debt.

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1 McQuillin, Mun. Corp. § 4.08 (3d ed. 1996).

2 *Id.* at § 4.09 (citations omitted). In Colorado, this is true only for statutory cities and towns — home rule municipalities are structured differently and subject to fewer constraints. *See generally* CML, *Home Rule Handbook* (1999).

3 *See generally Id.* § 4.05 (citations omitted).

4 *Id.* § 10.13.

5 C.R.S. § 31-15-101(2).

6 C.R.S. § 31-15-103.

7 *See generally, e.g., Aurora v. Bogue*, 489 P.2d 1295 (Colo. 1971).

8 *Williams v. Baltimore*, 289 U.S. 36, 40 (1933).

9 *See* Colo. Const. art. V, § 25.

10 Colo. Const. art. X, § 7; *Walker v. Bedford*, 26 P.2d 1051, 1053–54 (Colo. 1933).

11 Colo. Const. art. X, § 20.

While the topics mentioned in this section are affected by various provisions of TABOR, a full discussion of TABOR is beyond the scope of this publication. Nonetheless, TABOR has been and continues to be the subject of intense litigation determining the meaning of its terms and the scope of its requirements. Thus, before any contemplated action in the general area of municipal finance is undertaken, both CML's TABOR publication and the municipal attorney should be consulted for direction.[12]

THE EXPENDITURE OF PUBLIC FUNDS

APPROPRIATIONS AND PUBLIC PURPOSE

Deciding how the public's money is to be spent is one of the governing body's most important duties. It is also likely to provoke the most criticism, since taxpayers are notably sensitive when their pocketbooks are affected.

Two requirements must be met before an expenditure can be authorized — the expenditure must be for a public purpose and the governing body must have previously appropriated sufficient money to cover the expenditure.[13]

There has been much litigation concerning what constitutes a public purpose. In general, a public purpose is one that will promote the general welfare.[14]

Art. XI of the state constitution provides that no city or town may lend or pledge its faith or credit to any person, company, or corporation for any purpose whatsoever, or become responsible for any debt, contract, or liability of any person, company, or corporation.[15] The constitution also prohibits municipalities from making donations or grants to any company, and does not permit a municipality to become a subscriber to or shareholder in any corporation or company, except for certain exceptions that occur by operation of law.[16] The municipal attorney should be consulted whenever statutes are not clear on the authority to make an expenditure in this area.

LOCAL GOVERNMENT

Even if a planned expenditure is for an authorized public purpose, the governing body still generally may not make the expenditure unless it has previously appropriated enough money to cover the expense of the contract or purchase.[17]

In its legal sense, "appropriation" is the formal allocation of a certain amount of money for a specific purpose. An appropriation serves to limit and guide municipal officials in making disbursements of funds. Generally, persons who enter into a contract with the municipality for purchases or services not covered by a prior appropriation will not be entitled to recover the full amount should the city default, despite the existence of the contract.[18]

ANNUAL APPROPRIATIONS ORDINANCE

Pursuant to the Local Government Budget Law, before the beginning of the municipal fiscal year, the governing body must adopt a budget and pass its annual appropriations ordinance to cover expenditures for the coming year.[19] If the governing body fails to adopt a budget by the date required for the mill-levy certification, the appropriations for the new year are set automatically at 90 percent of the amounts for the previous year.[20] The total amount appropriated shall not exceed the anticipated revenue and expenditures outlined in the coming year's budget.[21]

After the annual appropriations ordinance has been approved, further appropriations may be made via statutorily outlined procedures in cases of the receipt of unanticipated revenues or circumstances requiring a transfer of funds, or in cases of emergency.[22]

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12 For more information on TABOR and its impacts, *see generally* CML, *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

13 *See generally* C.R.S. § 29-1-101 et seq. As to public works construction contracts, *see generally* C.R.S. § 24-91-103 et seq.

14 *See generally Denver v. Hallett*, 83 P. 1066 (Colo. 1905); *see also* CML, *Gift-Giving Options: When Cities and Towns Choose to Support Nonprofits* 6–7 (2005) (hereinafter *Gift-Giving*).

15 Colo. Const. art. XI, § 2.

16 *Id.* For more information on the power of municipalities to grant gifts and the meaning of the "public purpose" doctrine generally, *see* CML, *Gift-Giving*, *supra* note 14.

17 C.R.S. § 29-1-110.

18 *See generally Normandy Estates Metro. Recreation Dist. v. Normandy Estates*, 553 P. 2d 386 (Colo. 1976) (limiting the plaintiff's remedy to equity only). Exceptions to this rule exist, however. *See, e.g.,* C.R.S. § 24-91-103.6(4) (creating a different rule for construction contracts for public works projects).

19 C.R.S. § 29-1-101 et seq.

20 C.R.S. § 29-1-108(3).

21 C.R.S. § 29-1-108(2).

22 C.R.S. § 29-1-109; §§ 29-1-111 to 29-1-112.

During the year, each "warrant" drawn on the municipality must state the particular fund or appropriation to which the expenditure is chargeable, along with the person to whom it is payable.[23]

PURCHASING

PURCHASING PROCEDURE

A municipality's purchasing procedure can save or waste thousands of dollars. As the corporate authority of the municipality, the governing body is active in all large and some small purchases.

Certain purchasing costs may be reduced by using the purchasing services of a pool of purchasers, such as the State of Colorado or public agencies nationwide. Numerous items that may be ordered through the Colorado Department of Personnel and Administration include, but are not limited to, communications equipment, data processing supplies and equipment, highway maintenance products, janitorial supplies, office supplies, tools, and vehicle supplies and accessories.[24] CML members also have the opportunity to participate in the U.S. Communities Government Purchasing Alliance, *www.uscommunities.org*, a nonprofit established by public agencies to reduce the cost of purchased goods and to streamline the purchasing process. In general, municipal employees will determine the supply and service requirements of the municipality — the governing body only becomes involved when a requirement is unusual or involves a large sum of money.

There is no general statutory requirement that municipalities use competitive bidding in purchasing supplies or services, although municipalities may provide by ordinance that supplies shall be furnished by contract with the lowest bidder.[25] However, when a substantial amount of money is involved in a proposed purchase, competitive bidding should be used so that the lowest possible bid can be achieved as a result of competition. In statutory cities, Colorado law requires that work done by cities in the construction of public improvements costing $5,000 or more be done by contract to the lowest responsible bidder on open bids after ample advertisement. (The law further provides that it is unlawful to divide projects for the sole purpose of evading this bidding requirement.)[26]

LEASE-PURCHASE FINANCING

Lease-purchase financing has become an increasingly important tool of municipal capital acquisition and improvement. Lease-purchase arrangements allow public entities to meet important capital expenditure needs without incurring long-term debts. The need for goods such as computers and other high-tech equipment, as well as the more traditional needs of new buildings and other capital improvements, has exceeded the ability of many municipalities to fund such projects through the use of general obligation debt bonds.

Lease-purchase agreements have many practical advantages over general obligation bonds, but the greatest advantage is the legal one. Art. XI, sec. 6 of the Colorado Constitution forbids the creation of a long-term, general obligation debt on the part of municipalities without the approval of the electors of the municipality.[27] But lease-purchase agreements are not long- term, general obligations for legal purposes, and so do not require the approval of the voters in order to become effective.[28] In addition, the Colorado Supreme Court has held that lease-purchase agreements are not subject to the election requirements of TABOR because such agreements do not constitute a "multiple-fiscal year direct or indirect district debt or other financial obligation" within the meaning of the TABOR amendment.[29]

The typical lease-purchase arrangement allows a municipality to enter into an agreement that provides for a series of renewable one-year leases. The lease payments are such that at the end of the series of leases, the municipality has paid the equivalent of the full value of the leased property plus a certain amount of interest. This allows the municipality to build equity in the property year by year, and the agreement provides that once all lease payments are made, title of the property transfers to the municipality. However, since the municipality has an option to renew (or terminate) the lease each year, it may decline that option at any time and be under no further obligation under the terms of the agreement. Lease-purchase arrangements have other benefits, including lower interest rates and purchase costs, inflation hedges, and full warranty

23 C.R.S. § 31-30.5-207. A check may be used in lieu of a warrant, if such has been provided for by the governing body.

24 Information on the BIDS purchasing program may be obtained at *www.bidscolorado.com* or 303-866-6464.

25 C.R.S. § 31-15-201(1)(e).

26 C.R.S. § 31-15-712.

27 Colo. Const. art. XI, § 6. Except as may be otherwise provided by the charter of a home rule city and county, city, or town for debt incurred by such city and county, city, or town, no such debt shall be created unless the question of incurring the same be submitted to and approved by a majority of the qualified taxpaying electors voting thereon, as the term "qualified taxpaying elector" shall be defined by statute.

28 *Gude v. City of Lakewood*, 636 P.2d 691 (Colo. 1981).

29 *Bd. of Cnty. Comm'rs, Boulder v. Dougherty*, 890 P.2d 199 (Colo. App. 1994); *overruled on other grounds by In re* Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999). For further discussion of TABOR requirements, see CML, *TABOR*, *supra* note 12.

protection. Colorado statutes specifically provide for long-term rental or leasehold agreements and provide that all property involved in such agreements shall be exempt from state taxation.[30]

The Colorado Development Finance Corporation (CDFC) is a finance program for members of the Colorado Municipal League and other local governments in the state. It provides funding for lease purchase transactions often used by local governments to acquire vehicles, heavy equipment, school buses, computer systems, telecommunications equipment, minor building upgrades, and other capital investments that cannot be paid for in one year and typically are not large enough to warrant a traditional bond issue. For more information, visit *www.cooloradodfc.org.*

SPECIFICATIONS

Specifications that outline the requirements to be followed in bidding and provide the details of the subsequent contract are a prerequisite for using the bidding process. To eliminate the possibility of misunderstanding either at the time of bidding or when the contract is performed, the description of each commodity and service desired must be precise. At the same time, specifications should be elastic enough to maximize competition within the limits mentioned above. The Federal Specification Board of the General Services Administration has adopted more than 2,000 specifications, and the National Bureau of Standards has published *The National Directory of Commodity Specifications*, which lists and describes specifications used by a large number of public and private organizations. CML has sample municipal purchasing policies and can be provide examples to interested members upon request.

ADVERTISING FOR BIDS

After specifications have been prepared, the municipality may then advertise that it is accepting bids for the purchase of goods or services. Newspaper advertising often is used, especially with larger purchases. While it generally is agreed that a newspaper notice may be of limited value in obtaining competitive bids, it nevertheless remains an important safeguard against claims of deliberate exclusion of certain bidders and also helps to protect municipal officials from charges of discrimination or collusion. In reality, purchases that involve limited expenditures and fairly simple specifications often are solicited by telephone.

Once prepared, bids normally are submitted in writing in a sealed envelope, although oral bids supported by a written note may be adequate for relatively small, simple purchases. Once the bidding period is closed, the general practice is to open all bids at one public meeting of the governing body.

AWARDING THE CONTRACT

The governing body may, in most instances, either award the contract or refuse all bids, as there is no general Colorado law that requires a municipality to accept the lowest bid or any other bid. The governing body should reserve the right to reject any and all bids, because it may find all the bids too high or too close.

Authorities differ as to the proper criteria to be followed in accepting a bid. Most agree that it is best not to require that the lowest bidder be awarded the contract — the term most often used is the "lowest responsible bidder."[31] Municipalities may develop their own criteria for determining what a "responsible" bid is, but these often include professional ability, schedule for completion of the project, reputation, and experience.

In addition, many municipalities also have in place a "local preference" purchasing policy, which outlines criteria by which local vendors and service providers may have some sort of advantage over others in certain cases or for certain goods or services.

REVENUES

The following section provides a general discussion of some of the more significant municipal revenue sources. For more detailed treatment of the subject, refer to the CML's publications, *Municipal Taxes* and *Municipal User Charges and Fees* (2011).

It also is essential to recognize that TABOR places significant constitutional restraints on municipal authority to raise and retain revenue, and that a full discussion of TABOR is beyond the scope of this publication. For a detailed discussion of TABOR requirements, see the CML publication *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

PROPERTY TAXES

Municipalities are authorized to levy taxes on the same kinds and classes of taxable property within the municipality as are subject to taxation for state or county purposes.[32] The governing body of any municipality that is not home rule may establish annually whatever mill levy it deems necessary, so long as the levy does not produce a greater amount of revenue than was generated in the preceding year plus 5.5 percent (with certain adjustments for abatements, refunds, and

30 C.R.S. § 31-15-801 et seq.

31 McQuillin, Mun. Corp. § 29.80 (3d ed. 1996).

32 C.R.S. § 31-20-101.

previously omitted property).[33] However, certain valuations, levies, expenses and expenditures are excluded from these increased revenue limits.[34]

This statutory limitation may be overridden upon approval by the electors of the municipality. Additionally, statutory municipalities with a population of 2,000 or fewer people have the option of submitting their levy to the Colorado Division of Local Government for approval.[35] If the division does not approve the levy, the municipality still may obtain approval directly from the electors.[36]

For home-rule municipalities, the statutory limits on property tax revenue increases do not apply.[37] However, the charters of some home-rule municipalities contain property tax revenue increase limitations similar to the state statute, and some charters contain limitations on the maximum mill levy that may be imposed by the municipal governing body.

The TABOR amendment also imposes two specific limitations on the increase of property taxes and on the application of mill levies. In general, TABOR requires that the mill levy may not be increased without voter approval,[38] and prohibits property tax revenues from increasing annually by more than the rate of increase in the consumer price index for the Denver–Boulder area and adjustments in valuation due to local growth.[39]

Finally, while property tax assessment and collection is a county function in Colorado, municipalities must pay the county compensation for collecting municipal taxes and must help pay for annual publication of the delinquent tax list insofar as the municipal properties are concerned.[40]

SALES AND USE TAXES

State law authorizes "any incorporated town or city" municipalities to adopt a local sales or use tax, or both.[41] The sales taxes imposed by any non-home rule municipality must be collected by the Colorado Department of Revenue, and, in general, the collection, administration, and enforcement of the municipal sales tax is undertaken in "the same manner as the collection, administration, and enforcement" as the state collects its own sales tax.[42]

Municipal sales taxes for statutory municipalities must be approved by a majority vote at a municipal election.[43] Use taxes for statutory municipalities may be imposed only on the use or consumption of construction and building materials, and on the storage, use, or consumption of motor and other vehicles on which registration is required.[44] Like a municipal sales tax, use taxes must also be approved by majority vote at a municipal election.[45] Care should be taken in drafting the use tax ordinance and, particularly, in establishing a method for collection of the use tax on building and construction materials.[46] Home rule municipalities are not subject to restrictions on their sales and use tax base, and have the option of electing to locally collect their own tax revenues — declining to use the state process.

Countywide sales or use taxes, or both, also are authorized by state statute.[47] Countywide sales or use tax proposals must be approved by a majority of the electors of the county voting thereon,[48] and the countywide sales tax proposal must provide for any distribution of revenue collections between the county and the municipalities located within the county.[49] Like the municipal use tax, the countywide use tax can be imposed only on the use or consumption of construction and building materials and on the storage, use or consumption of motor and other vehicles on which registration is required.[50]

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33 C.R.S. § 29-1-301.

34 *See id.*

35 C.R.S. § 29-1-302(1).

36 C.R.S. § 29-1-302(2)(a).

37 *See* C.R.S. § 29-1-301(1)(a).

38 Colo. Const. art. X, § 20(8); *but see Bolt v. Arapahoe Cnty. School Dist. No. 6*, 898 P.2d 525 (Colo. 1995) (holding that a "rigid interpretation" of TABOR that would cause a "reduction in government services" would not be permitted. Thus, for example, a school district was permitted to increase its mill levy without voter approval in order to recoup property tax revenue lost due to abatements and refunds).

39 Colo. Const. art. X, § 20(7)(c).

40 C.R.S. § 31-20-107.

41 C.R.S. § 29-2-102(1).

42 C.R.S. § 29-2-106(1).

43 Colo. Const. art. X, § 20(3)(a).

44 C.R.S. § 29-2-109(1). Many restrictions and limitations exist within these two broad categories.

45 Colo. Const. art. X, § 20(3)(a).

46 *See, e.g., Rancho Colorado, Inc. v. Broomfield*, 586 P.2d 659 (Colo. 1978).

47 *See* C.R.S. § 29-2-103.

48 *Id.*; C.R.S. § 29-2-104; Colo. Const. art. X, § 20.

49 C.R.S. § 29-2-104.

50 C.R.S. § 29-2-109. Many restrictions and limitations exist within these two broad categories.

The sales tax base of statutory municipalities is defined by statute. However, several items are exempt from state tax but remain subject to local tax unless the subject of a locally adopted exemption. Among these items are certain machinery and machine tools; electricity and other specified fuels sold to occupants or residents for the purpose of operating residential fixtures and appliances that provide light, heat, and power for residences; and certain occasional sales by nonprofit entities.[51] Home-rule municipalities pursuant to art. XX of the Colorado Constitution may determine their own tax base and exemptions.

Both statutory and home-rule municipalities are required to exempt from taxation food purchased with food stamps or vouchers issued as part of the supplemental food program for women, infants, and children (WIC).[52] Statutory and home-rule municipalities may choose to exempt other food purchases from taxation but must use the statutory definitions of food.[53]

GENERAL AND SPECIFIC OCCUPATION TAXES

There are two types of occupation taxes now in use. One is the *general-occupation tax,* levied on all places of business solely as a revenue-raising measure. The other is the *specific-occupation tax*, levied on certain types of business or occupations. The specific-occupation tax is used frequently as a revenue measure and, in conjunction with licensing provisions, as a regulatory measure. Courts have upheld both types and, in general, once voter-approval pursuant to TABOR is obtained, there no longer seems to be serious question as to the municipality's authority to levy either tax, within reason.

Municipalities are authorized to levy taxes on any and all lawful occupations, business places, amusement, or place of amusements within the corporate limits.[54] Municipalities also are empowered to tax and regulate "hucksters, peddlers, pawnbrokers, and keepers of ordinaries, theatrical, and other exhibitions, shows, and amusements;" "hackmen, omnibus drivers, carters, cabmen, porters, expressmen [and the like];" "runners for stages, cars, public houses, or other things or persons;" billiard halls, bowling alleys, and the like; "auctioneers, lumberyards, livery sables, public scales, money changers, and brokers;" and secondhand and "junk" stores.[55] Oil and gas wells, for purposes of the application of any occupational privilege tax, are exceptions to the definitions of occupation or business place subject to such tax.[56]

Occupation taxes usually take one of two forms: a uniform rate levied on all businesses regardless of size or a sliding rate based on the number of employees in the business or some other standard.[57] Occupation taxes measured by gross income or gross receipts is not allowed under state law because occupation taxes framed in that manner have been interpreted as being too similar to income taxes, and only the state has authority to impose an income tax.[58]

SPECIAL ASSESSMENTS

Another source of revenue applicable in certain situations is the special assessment. The Colorado Supreme Court described assessments as "special benefits which will sustain a special assessment must be immediate, and of such a character that they can be seen and traced; remote or contingent benefits enjoyed by the general public will not sustain a special assessment."[59] In theory, special assessments offer a way for municipal governments to charge all or part of the cost of certain improvements to the property owners who receive special benefits from the improvements.[60] Special assessments may be levied only against property benefited by the improvements, and the Colorado Supreme Court has held that it does not violate art. XI, sec. 1 of the Colorado Constitution for a municipality to pledge its own credit for payment of the assessments of an improvement district.[61]

There are several advantages to financing public improvements by special assessments. To begin with, the costs of the improvements are paid by the owners whose property especially is benefited rather than by the taxpayers at large. In addition, special assessments also may reach property normally exempt from the general property tax. For instance, the General Assembly has exempted from taxation property owned by the state, counties, municipal corporations, and public libraries; property used solely and exclusively for religious, educational, and charitable purposes; and cemeteries not used

51 *See* C.R.S. § 29-2-105.

52 C.R.S. §§ 29-2-105(6) to 29-2-105(7).

53 C.R.S. § 29-2-105(8).

54 C.R.S. § 31-15-501(1)(c).

55 C.R.S. § 31-15-501(1).

56 C.R.S. § 31-15-501(1)(c).

57 *See generally* CML, *Municipal Taxes* (2011).

58 *See, e.g., Denver v. Sweet*, 329 P.2d 441 (Colo. 1958); *Denver v. Duffy Storage & Moving Co.*, P.2d 339 (Colo. 1969); *Bd. Of Trustees v. Foster Lumber Co.*, 548 P.2d 1276 (Colo. 1976); *Mountain States v. Colorado Springs*, 572 P.2d 834 (Colo. 1977).

59 *Ochs v. Hot Sulphur Springs,* 407 P.2d 677 (Colo. 1965).

60 *See* C.R.S. § 31-25-502.

61 *Bradfield v. Pueblo*, 354 P.2d 612 (Colo. 1960).

or held for private or corporate profit.[62] Also exempt are inventories of merchandise and materials and supplies that are held for consumption by a business or that are held primarily for sale. However, in interpreting the constitutional and statutory meaning of municipal authority to levy special assessments, the Supreme Court has held that they are not a tax, and so properties normally exempted from municipal taxation are chargeable with special assessments for local improvements.[63]

Colorado municipalities are permitted to finance improvements through special assessments using a variety of provisions in state law. If certain conditions are satisfied, municipalities are empowered to levy special assessments to pay for the cost of grading, paving, curbing, guttering, parking, or otherwise improving any municipal street or alley; sidewalks; water mains; the distribution of heating and cooling obtained from geothermal, solar, wind, hydroelectric, or renewable biomass resources including waste and cogenerated heat; the necessary construction and appliances for the installation of a system of artificial lighting; sewers, sewage disposal works, and renewals or extensions thereof; and any such other public works as may be considered necessary and authorized by the governing body.[64]

If such improvements are undertaken under the authority granted under C.R.S. § 31-25-503, they must be either initiated by the governing body by "resolution declaring its intention to construct the improvements"[65] or by citizen petition if "subscribed by the owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed."[66] The governing body also may create a district for the purpose of acquiring existing improvements, in which case provisions concerning construction of improvements by the municipality, competitive bidding, and preliminary plans and specifications shall not apply.[67] In these cases, "[t]he governing body is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of the cost thereof, the waiver or limitation of legal rights, or any other matter concerning the district."[68]

In addition to those provisions located in title 31, art. 25, of the Colorado Revised Statutes, there are several provisions that authorize municipal governing bodies to finance certain types of local improvements by special assessments. The governing body is authorized to construct or repair culverts, drains, sewers, water mains, and cesspools, and to assess all or part of the costs against benefited properties.[69] The governing body may impose a special assessment to defray the expense of constructing sewer systems.[70] It may provide for the construction and maintenance of sidewalks, curbs, and gutters, and for payment by special assessment upon adjacent or abutting property.[71] Streets and alleys may be constructed or improved and financed in the same manner.[72]

The statutes also provide that:

> *[w]hen the owners of sixty percent of the frontage of the lots or lands adjacent to or abutting upon any street or alley or designated portion thereof petition the governing body in writing to construct a sewer, including a storm sewer, in said street or alley or require sidewalks to be constructed along said street or alley or designated portion thereof, it is the duty of the governing body to order said improvement to be made, to assess the cost of said improvement against the lots or lands adjacent to or abutting upon said sidewalk, street, or alley so improved, and to collect the assessment.*[73]

In fact, the governing body may, on its own motion, order a property owner to construct or repair a sidewalk, curb, or gutter. If the owner fails to comply, the municipality is empowered to undertake the project and assess the costs against the adjacent property owner.[74]

Finally, the governing body also is empowered to provide for and compel the removal of weeds, brush, and rubbish from properties within the municipality, including alleys behind such property and sidewalk areas in front of such property. The

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62 *See* C.R.S. § 39-3-101 et seq.

63 *See, e.g., Denver v. Knowles*, 30 P. 1041 (Colo. 1892); *Denver City Ry Co. v. Denver*, 41 P. 826 (Colo. 1985); *Denver v. Tihen*, 235 P. 777 (1925); *State Farm Mut. Auto Ins. Co. v. Temple*, 491 P.2d 1371 (Colo. 1971); *Bloom v. Ft. Collins*, 784 P.2d 304 (Colo. 1989); *E-470 Pub. Highway Auth. v. 455 Co.*, 3 P.3d 18 (Colo. 2000).

64 *See* C.R.S § 31-25-503(1) et seq.

65 C.R.S § 31-25-503(1)(d).

66 C.R.S. § 31-25-503(1)(a).

67 C.R.S. § 31-25-503(9).

68 C.R.S. § 31-25-503(10).

69 C.R.S. § 31-15-709(1)(a).

70 C.R.S. § 31-15-709(1)(b), § 31-15-703(2).

71 C.R.S. § 31-15-702(1)(b)(I).

72 C.R.S. § 31-15-702(1)(b)(II).

73 C.R.S. § 31-15-703(1).

74 C.R.S. § 31-15-703(2).

municipality may prescribe by ordinance the notice, manner, and time for removal and may assess the whole cost of removal — including 5 percent for inspection and incidental costs — upon the properties from which weeds, brush, and rubbish are to be removed. The assessment will constitute a lien against the property until paid and, once assessed, will have priority over all other liens except general taxes and prior special assessments.[75]

As with all financial matters and fundraising mechanisms, the municipal attorney always should be consulted before the governing body seeks to finance any improvement(s) by special assessment. Not only is the Colorado law detailed in this area, but there may also be sound policy reasons for not using special assessments.

SERVICE CHARGES AND USER FEES

In Colorado, municipalities increasingly rely on financing many governmental activities through user fees or charges services rather than through general tax revenues. This practice initially became popular when municipalities began operating water utilities several decades ago and began financing their water systems through the relevant charges imposed on the water users. Unlike taxes or multiple-year debt, fees do not require voter approval pursuant to TABOR. Following their initial uses in the fields of financing water systems and municipal electric and gas utilities, the use of service-charges has spread to other municipal functions such as garbage and refuse collection, sanitary sewer services, and even the provision of fire and police protection services.

User fees possess obvious shortcomings when applied to functions such as police and fire protection, for which there is little uniformity or predictability in the cost of service to any one taxpayer. On the other hand, certain services used primarily by identifiable groups of citizens rather than by all taxpayers have been financed successfully in whole or part by charges to the users. Recreational facilities such as golf courses, swimming pools, and libraries are some examples. Parking facilities also lend themselves to service-charge financing. Building permit fees frequently support part of the expense of the building inspection program, and other inspection programs such as restaurant or trailer court inspections may be financed from the license fee upon these businesses.

Statutes authorize collection of service charges for water, gas, heating and cooling, and electric service, stating that "[g]as, heat, cooling, and electric light shall be charged for according to use."[76] Statutes do not require that municipal utilities be self-supporting; if they are not, the governing body is permitted to levy a tax to finance the deficit.[77]

A more detailed discussion of user charges may be found in CML's *Municipal User Charges and Fees* (2011).

MISCELLANEOUS SOURCES OF REVENUE

Municipal governing bodies are empowered "to apply for and to accept grants or loans or any other aid from the United States or any agency or instrumentality thereof under any federal law in force," for the purpose of water purification and water-pollution prevention and abatement.[78] The governing body also is authorized, after approval by the Colorado Board of Health, "to enter into joint operating agreements with industrial enterprises and to accept gifts or contributions from such industrial enterprises for the construction, reconstruction, improvement, betterment, and extension of sewage facilities and sewage treatment works."[79] Municipal planning commissions are authorized to accept and use gifts to perform their functions,[80] and the Colorado Constitution allows the state to give direct or indirect financial support to any political subdivision as may be authorized by general statute.[81] However, receipt of any grants from the state can have TABOR implications, particularly insofar as such grants may affect authorized revenues.[82]

Fines for violations of municipal ordinances and forfeitures, all of which must go into the municipal treasury, constitute another source of revenue.[83] One final other significant source of revenue is shared taxes, such as the state cigarette tax and the state-collected, locally shared highway users tax. However, municipal officials may not have any direct control over such taxes.

INDEBTEDNESS

THE BORROWING POWER

When traditional sources of revenue prove inadequate, the municipal governing body may exercise its power to borrow money.

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75 C.R.S. § 31-15-401(1)(d)(I).

76 C.R.S. § 31-15-707(1)(d).

77 *Id.*

78 C.R.S. § 31-15-710(1)(a)(I).

79 C.R.S. § 31-15-710(1)(a)(VI).

80 C.R.S. § 31-23-210.

81 Colo. Const. art. XI, § 7.

82 For more information on possible TABOR implications, see CML, *TABOR*, *supra* note 12.

83 See C.R.S. § 31-16-109.

TYPES OF BORROWING

There are several ways municipalities borrow money — through the sale of bonds, by the issuance of tax anticipation warrants, or by short-term borrowing for emergencies.

Projects that have long utility, do not occur frequently, and are quite costly when compared to the municipality' s current financial resources and operating budget usually are considered legitimate subjects for bond issues. Utilizing the municipality's credit for such projects, however, involves more than merely deciding which projects should be financed by bond issues and which should be financed on a pay-as-you-go basis. As in other fields, a municipality is dependent upon state and federal constitutional limitations and statutory restrictions in the exercise of its power to borrow.

LIMITS ON BORROWING

There are two major limitations on the ability of the governing body to create a debt — a fixed debt limitation and mandatory voter approval. TABOR section 4(b) requires voter approval for the "creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever."[84] However, the following are exempted from such requirements: refinancing of bonded debt at a lower interest rate; adding new employees to existing pension plans; and situations in which the government has cash in the current year that is irrevocably pledged to cover future years' payments.[85]

Municipalities are authorized by the legislature to issue bonds for any public purpose of the municipality including, but not limited to, the supply of water, gas, heating and cooling, and electricity; the purchase of land; the purchase, construction, extension, and improvement of public streets, buildings, facilities, and equipment; "and for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the municipality."[86] Municipalities also are authorized to issue bonds for funding any of their legally floating indebtedness,[87] refunding any of their bonded indebtedness,[88] and paying any special assessment bonds or obligations that it may issue.[89]

The total amount of debt a municipality is authorized to incur is limited by statute to 3 percent of the actual value of all taxable property within the municipality.[90] In addition, improvement-district bonds, revenue bonds, and refunding bonds do not fall within this debt limitation.[91]

TYPES OF BONDS

There are two general categories of bonds issued by municipalities in Colorado — general-obligation bonds and revenue bonds. General-obligation bonds are more attractive to purchasers and hence usually command a lower interest rate, but the use of revenue bonds on certain types of projects also is widespread.

General-obligation bonds are secured, at least in part, by a special tax levy established by an ordinance that cannot be repealed until the bonds are paid. The tax levy, together with such other revenue, assets, or funds as may be pledged, must be sufficient to pay the interest and principal on the debt in not more than 30 years.[92]

The other general type of bonds — revenue bonds — are not secured by general tax revenues but by the earnings of the specific project(s) they are used to finance, such as a water or sewer system. While revenue bonds are not as attractive to investors as general-obligation bonds, they do have advantages in financing projects that can produce sufficient revenue to cover their own operating and debt service costs. Water, gas and electric utilities, public transportation systems, airports, and, in some cases, auditoriums and stadiums may fall in this category.

There are sound arguments for and against financing by issuance of revenue bonds, and any decisions made should be based on an evaluation of all factors. Because of the many legal issues involved, professional, legal, and financial advice is necessary whenever a municipality is contemplating the use of municipal-bond issues.

PAY-AS-YOU-GO FINANCING

Some municipalities prefer not to use their borrowing powers at all, on the belief that improvements should not be undertaken until the cash is on hand to pay for the improvements. Appropriate funds thus are set aside each year until enough is accumulated to begin construction.

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84 Colo. Const. art. X, § 20(4)(b).

85 For a detailed explanation of these debt election requirements, see CML, *TABOR*, *supra* note 12.

86 C.R.S § 31-15-302 (1)(d)(I).

87 C.R.S. § 31-21-102.

88 C.R.S. § 31-21-202.

89 C.R.S. § 31-21-301.

90 C.R.S. § 31-15-302(1)(d)(II). The total taxable value is as determined by the assessor, and this limitation does not apply to debts incurred in supplying water.

91 See CML, *TABOR*, *supra* note 12 at 6.

92 C.R.S. § 31-15-302(1)(d)(II). This limitation does not apply to bonds issued for supplying water; these may mature over a longer period.

To accomplish this, Colorado law provides that the governing body of any municipality may establish, by resolution, a "public works fund" to provide and accumulate money for the construction, acquisition, or improvement of public buildings, water facilities, sewer facilities, heating and cooling works, or other public works, or to supplement bond issues for these purposes. The fund may be financed by property taxes or by other taxes or revenues authorized by law.[93]

Such funds may be accumulated and held over for expenditure year-to-year but may be used only for the public works authorized. The governing body may change the purpose for fund expenditures after holding a public hearing. For statutory cities, Colorado law requires that after completion of the project for which the fund was created, any unexpended balance must be transferred to the general fund of the municipality.[94]

There are sound arguments in favor of this pay-as-you-go policy. The municipality refrains from committing future generations to meet certain obligations and avoids interest costs. It is not uncommon for interest charges on bonds to double the cost of the improvement by the time the bonds mature.

There also are sound arguments against using strict pay-as-you-go financing of certain improvements. By setting aside current revenues to pay for future projects, many taxpayers are paying for an improvement that they may never see or use. On the other hand, by borrowing ahead to construct the improvement when it is needed, future generations help to pay for improvements that may be used for many years to come.

In addition, it is difficult to save for future needs without sometimes (or often) suffering a serious loss in purchasing power during times of continued inflation. In the process of accumulating enough funds to pay cash for a project, a municipality may watch rising labor and materials costs double the cost of the proposed improvement. The borrower, therefore, has the advantage in this respect: During inflationary periods, she is able to pay off the debt with "cheaper" dollars.

In practice, the governing body often uses some combination of pay-as-you-go financing and borrowing. Debt policy decisions require careful study, and it is important to remember that an overly sharp policy focus on short-term frugality can fail to keep pace in public improvements with growth. "

REGULATING COMMUNITY ACTIVITY

THE POLICE POWER

Apart from the governing body's financial powers in municipal matters is its power to regulate various phases of community activity to promote "the general welfare." This is known as the municipal police power. In a broad sense, the police power encompasses all governmental power for the public good. By exercising its powers "to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience"[95] of the residents of the municipality, the governing body has the opportunity to make the community a better place.

The police power is based upon the fundamental premise of the supremacy of community rights over individual rights. It is a broad power, with sufficient flexibility to meet ever-changing conditions. It extends to all the great public needs, and its traditional application in the following fields of regulation merely illustrates the scope of the power without intending to propose any limitations: nuisances, public order, public tranquility, Sabbath observance, businesses, trades, professions, occupations, intoxicating beverages, public amusements and recreations, public health, cemeteries, internments, animals, air pollution, zoning, buildings, housing, weights and measures, foods, drugs, dairy products, peddlers, hawking, signs, billboards, personal liberties and rights, fire protection, streets, vehicles, buses, and railways.

This section will cover only some of the more common uses of the police power, including preserving the peace; protecting the public health and safety; regulating streets, parks and public places; regulating business and business practices; regulating zoning and building standards; and a few miscellaneous exercises of the police power.

PRESERVING THE PEACE

The municipal governing body may pass and cause to be enforced all necessary police ordinances and may regulate the municipal police force.[96] Municipalities enforce ordinances in municipal courts, whose jurisdiction is specifically authorized in the Colorado Constitution for boards and councils to define the limits within the province of local and municipal matters.[97] The General Assembly has reinforced this authority by providing a statutory framework to guide municipal courts in the exercise of their jurisdiction.[98]

One means of preserving the peace is through the use of the nuisance power. The governing body may declare certain activities to be nuisances and may impose fines upon parties who create, continue, or suffer nuisances to exist.

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93 C.R.S. § 31-15-302(1)(f)(I).

94 C.R.S. § 31-15-302(1)(f)(IV).

95 C.R.S. § 31-15-103.

96 C.R.S. § 31-15-401(1)(a).

97 Colo. Const. art. XX, § 6(c); *see also Town of Frisco v. Baum*, 90 P.3d 845 (2004).

98 C.R.S. § 13–10–101 et seq.

The police powers include specific authorization:

- to prevent fighting, quarreling, dog fights, cock fights, and all disorderly conduct;
- to prevent and suppress riots, affrays, noises, disturbances, and disorderly assemblies in any public or private place;
- to suppress bawdy and disorderly houses and houses of ill fame or assignation within the municipality and within three miles beyond unless the three-mile extension enters another municipal jurisdiction;
- to suppress gaming and gambling houses, lotteries, and fraudulent devices and practices for the purpose of gaining or obtaining money or property;
- to restrain and punish loiterers, mendicants, and prostitutes;
- to prohibit and punish for cruelty to animals; and
- to regulate and prohibit animals from running at large or from being kept within municipal limits.[99]

PROTECTING THE PUBLIC HEALTH AND SAFETY

Several specific grants of power that may be used to protect the public health and safety include the powers to abate nuisances; to regulate businesses, building, and zoning; and to compel connection to water and sewer systems.

The governing body is authorized "[t]o do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease."[100] The governing body is also granted broad authority to regulate businesses,[101] and to regulate the placement and construction of buildings within the municipality.[102]

To protect the public health, the governing body may require connection to the municipal sewer system. If the owner of the property is financially unable to make the required connection, the governing body may make the connection and require repayment from the owner.[103] The governing body also may condemn public and private water wells and regulate water use in the interests of public health.[104]

The state and the federal governments regulate many aspects of public health protection from environmental hazards. The local governing body often is responsible for assuring compliance with these requirements. For example, local governments are subject to environmental regulations concerning drinking water quality and water-treatment plant operation, wastewater plant discharges and operation, sewage sludge disposal, solid and hazardous waste disposal (including incineration), and the application of pesticides. These environmental requirements are often complex and compliance can be costly. The governing body should assure that those responsible for managing the day-to-day operations of the municipality should stay abreast of environmental requirements so the governing body can anticipate compliance costs and otherwise meet its responsibilities under these programs.

The power to protect the safety of the public includes not only the regulation of traffic, but also the regulation of inspection of potentially dangerous installations such as steam boilers; the regulation of building practices with regard to fire hazards, fire escapes, and exits; the regulation or prohibition of the storage and transportation of combustible or explosive materials within municipal limits; and the regulation of fireplaces to minimize emission levels and potential fire hazards.[105]

Finally, the power to protect the public health also can be exercised by county and district health departments, which may have jurisdiction over municipal corporations situated within the territorial limits of the county or counties comprising the district.[106]

REGULATING STREETS, PARKS AND PUBLIC PLACES

The care, supervision and control of all public streets, sidewalks, parks and other public grounds in the municipality have been delegated to the governing body, including the authority to:

- regulate their use, provide for their cleaning and lighting, prevent and remove encroachments upon them, and direct and regulate the planting of ornamental and shade trees;
- regulate openings therein for laying out gas or water mains and pipes, the building and repairing of sewers, tunnels and drains, and the erecting of utility poles;
- regulate the use of sidewalks along the streets and alleys, and require the owner or occupant of any premises to keep the sidewalks free from snow and other obstructions;
- prevent any activity that would cause damage to any streets, alleys or public ground;

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99 *See generally* C.R.S § 31-15-401.

100 C.R.S. § 31-15-401(1)(b).

101 *See* C.R.S. § 31-15-501.

102 *See* C.R.S. § 31-15-601.

103 C.R.S § 31-15-709(1)(b); § 31-35-601 et seq.

104 C.R.S. § 31-15-708(1)(c).

105 *See* C.R.S. § 31-15-601.

106 C.R.S. § 25-1-501 et seq.

- regulate crosswalks, curbs and gutters;
- regulate and prevent the use of streets, parks, and public grounds for signs, signposts, awnings, awning posts, and power and communication poles, and for posting handbills and advertisements;
- regulate and prohibit the exhibition or carrying of banners, placards, advertisements, or handbills in the streets or public grounds or upon the sidewalks;
- regulate and prevent the flying of flags, banners, or signs across the streets or from houses; and
- regulate traffic and sales upon the streets, sidewalks, and public places, and regulate the speed of vehicles, cars, and locomotives in the limits of the municipality.[107]

The power to regulate public grounds also extends to municipal cemetery operations. The governing body may establish and regulate cemeteries either inside or outside of the municipal limits and may cause cemeteries to be removed and prohibit their establishment within one mile of the municipality.[108]

REGULATING AND LICENSING BUSINESSES

The municipal governing body has been granted authority in appropriate instances to prohibit, license, regulate, and tax businesses. Businesses that are offensive or unwholesome or that are carried on in an offensive or unwholesome manner may be prohibited from operating within the limits of the municipality.[109] Lawful occupations, business places, amusements, or places of amusements may be licensed, regulated, and taxed, subject to state law.[110] In addition, C.R.S. § 31-15-501 contains express authorization for municipal regulation of many other specified businesses and business activities.[111]

Regulation of business usually is accomplished by "licensing" — a process by which a certain type of business activity is prohibited in the municipality unless its operator obtains a license. To obtain this license the operator must meet certain standards.

Courts have held that the right to carry on a legitimate business is a property right and cannot be taken away or abridged by an exercise of the police power unless it appears that the interest of the public generally requires such interference and that the means are reasonably necessary for the accomplishment of the purpose and are not unduly oppressive.[112] Municipal officials must recognize these limitations on their exercise of the police power in their regulation and licensing of local businesses.

LIQUOR LICENSING

While the State of Colorado has retained exclusive authority over the regulation, manufacture, and sale of intoxicating liquors (malt, vinous, and spirituous liquors), municipalities do retain some original powers to make reasonable rules and regulations with respect to the sale of fermented malt beverages (3.2 percent beer).[113] In addition, while the municipal governing body acts as the licensing authority for liquor outlets within the corporate limits of the municipality, it must act in accordance with the provisions of the state liquor code.[114]

In granting liquor licenses, the governing body is required by statute to "consider ... the reasonable requirements of the neighborhood, (and) the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority."[115]

Liquor licensing is discussed further in *Liquor and Beer Licensing Law and Practice* (2005), published by CML.[116] The governing body should not proceed in liquor-licensing cases without the benefit of competent legal counsel and should proceed only in careful compliance with the liquor code.

MARIJUANA LICENSING

Local governments may choose to prohibit retail *medical* marijuana and *recreational* marijuana establishments.[117] Those cities and towns that choose to allow medical and/or recreational marijuana may locally license these retail operations.[118]

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107 C.R.S. § 31-15-702.

108 C.R.S. § 31-25-702.

109 C.R.S. § 31-15-501(1)(a).

110 C.R.S. § 31-15-501(1)(c). Oil & gas wells and their associated production facilities, however, are made explicitly exempt.

111 *See id.*

112 *Wilson v. Denver,* 178 P. 17 (Colo. 1918).

113 C.R.S. § 12-47-101 et seq.

114 See generally CML, *Liquor & Beer Licensing Law & Practice* (2006).

115 C.R.S. § 12-47-301(2)(a).

116 CML, *Liquor & Beer Licensing Law & Practice*, *supra* note 114.

117 C.R.S. § 12-43.3-106; Colo. Const. art. 18, § 16(5)(f).

118 C.R.S. § 12-43.3-103; Colo. Const. art. 18, § 16(5)(f).

The state and local governments may dually issue a local license for medical marijuana centers, optional premises cultivation, and infused products manufacturing.[119] Cities and towns may adopt regulations on medical marijuana establishments "necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license."[120]

Marijuana establishments must be lawfully licensed to sell for personal, recreational use.[121] Local governments may adopt regulations governing the time, place, manner, and number of recreational marijuana establishment operations so long as the regulations do not conflict with Amendment 64, regulations, or legislation.[122] At the time of publication, implementing legislation and rules were being drafted to determine licensing for commercial operations of recreational marijuana. CML is engaged in the stakeholder process and will keep municipalities informed as the law develops, and maintains tables tracking local action on medical and recreational marijuana, as well as sample ordinances; see *www.cml.org/marijuana.aspx*.

FRANCHISING

The rates of privately owned water, electric, and gas utilities are subject to regulation only by the state Public Utilities Commission; however, municipalities may further regulate the operations of certain of these companies within municipal limits through the power to prohibit the permanent use of streets or alleys. Permanent use of streets or alleys for water and gas lines or utility poles usually is permitted by granting a "franchise" to the company concerned.

All franchises must be granted by ordinance and only after appropriate public notice is given.[123] Franchises for gas, water, heating, cooling, and electric utility operations may not be granted for more than 25 years.[124] No local franchise may be required of telecommunications service providers.[125]

Although the governing body may place certain requirements on the utility company before granting a franchise (such as requiring franchise fees), only the Public Utilities Commission may regulate the rate schedule itself.

CONTROLLING LAND-USE

Although certain uses of the zoning power have been subject to litigation in the courts, the general grant of power is as follows:

> *[F]or the purpose of promoting health, safety, morals or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, the height and location of trees and other vegetation, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.*[126]

Vested property rights. Actions of the municipal governing body may have the effect of creating "vested property rights" for certain individuals to a certain use of their properties in a way that may not thereafter be disturbed — either by action of the municipal governing body or the voters through referendum — without payment of just compensation. Historically, vested property rights were created when the governing body granted a land-use approval upon which the owner of the property relied in his or her subsequent expenditure of money or initiation of construction. After that time, the landowner could not be prohibited from completing the structure and using the land for the purpose originally approved. In 1987, the General Assembly enacted a statute establishing that local government approval of a "site specific development plan" by itself creates a vested property right.[127] This means that when the municipal governing body approves such a plan, it may not later change the basic uses that may be made of the property. The statute has limitations on its application and certain exceptions, and the statute also allows local governing bodies to determine by ordinance the point in their land-use approval process at which vested property rights will be created.[128] Whenever site-specific plans are being crafted or changed, therefore, the municipal attorney or planning director should be consulted.

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119 C.R.S. §12-43.3-301.

120 C.R.S. § 12-43.3-301(2)(b)(III).

121 Colo. Const. art. 18, § 16(5).

122 Colo. Const. art. 18, § 16(5)(f).

123 C.R.S. § 31-32-101.

124 C.R.S. § 31-15-707(1)(c).

125 C.R.S. § 38-5.5-101 et seq.; *see also Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

126 C.R.S. § 31-23-301.

127 C.R.S. § 24-68-101 et seq. In 1999, the General Assembly went further, amending the above statute so that effective Jan. 1, 2000, if a local government has not adopted an ordinance or resolution specifying what constitutes a "site specific development plan" that would trigger a vested property right, then rights would vest upon the approval of any plan, plat, drawing, or sketch that is "substantially similar" to the statutory definition. C.R.S. § 24-68-103(1)(a).

128 *See generally id.*

Annexation. Municipalities in Colorado expand through annexation. This generally involves the submission of a petition for annexation or for an annexation election. The municipal governing body then conducts a public hearing and adopts an annexation ordinance, the effect of which is to bring the property into the city. A number of restrictions on the availability and manner of annexation are set forth in the Municipal Annexation Act of 1965.[129]

There is a basic requirement that the property proposed to be annexed be contiguous to a present boundary of municipality for at least one-sixth of the annexing property's perimeter. There are certain circumstances in which intervening public lands, roads, rights of way, etc., may be "skipped" or ignored for purposes of continuity, however, these are the subject of detailed provisions in the annexation statutes.

Often preceding annexations is the negotiating and signing of a "pre-annexation" agreement between the municipality and the landowner desiring to annex. These agreements cover, among other things, what zoning is proposed for the property and what improvements will be made by the landowner and dedicated to the municipality (streets, curbs and gutters, lights, water and sewer, etc.).

For more information on annexation in Colorado generally, see CML's 2003 publication on the topic.[130]

Regulating building and construction. Colorado statutes permit the municipal governing body to prescribe the manner of construction of stone, brick, and other buildings in the municipality.[131] Compliance with building regulations usually is obtained through a system of inspections during and after the construction of each building. To govern building construction, most municipalities adopt the International Building Code, with or without local amendments. Copies of the current version of the code are available from the International Code Council, 500 New Jersey Ave., NW, 6th Floor, Washington, D.C. 2001, or online at *www.iccsafe.org.*

Other land-use controls. Other land-use control powers include the power to direct the location or prohibit the operation of certain businesses as provided in C.R.S. § 31-15-501, and to regulate the manner of construction of certain structures and prohibit certain hazardous activities as provided in C.R.S. § 31-15-601. Municipalities also are empowered, within certain limits, to establish, regulate, restrict, and limit some types of uses on or along any storm or floodwater runoff channel or basin[132] to authorize planned unit developments by enacting an ordinance in accordance with C.R.S. title 24, art. 67,[133] and to create a planning commission with the powers set forth in title C.R.S. 31, art. 23, part 2.[134]

Other land-use powers are granted to municipalities in C.R.S. title 29, art. 20, and title 24, art. 65.1.

Miscellaneous powers. Many other powers have been granted to municipalities. The governing body, for example, may provide for conducting a census; construct or acquire water, gas or electric utilities; spend money to advertise the resources and attractions of the municipality; and even levy up to 0.6 mill for purposes of public entertainment.

A complete enumeration of the powers of the municipal governing body is impossible; many powers authorized decades ago remain in the statutes, although they have little application today.

The realistic goal for any municipality, of course, is not the exercise of all possible powers, but rather the discriminate use of those it needs. Before embarking on any new activity, the governing body should consult the statutes and obtain legal counsel to determine whether the municipality has authority to enter the field.

129 C.R.S. § 31-12-101 et seq.

130 CML, *Annexation in Colorado* (2003).

131 *See* C.R.S. § 31-15-601(1)(c).

132 C.R.S. § 31-23-301(1).

133 C.R.S. § 31-23-313.

134 C.R.S. § 31-23-202.

CHAPTER FIVE:
CARRYING OUT THE GOVERNING BODY'S JOB

THE JOB OF THE MUNICIPAL LEGISLATOR

GETTING ELECTED

You have been elected to municipal office. What were your motivations to run in the first place? Will these factors determine what role you play as an elected official in your city or town? Let's examine some of the common factors involved in running for local government office.

"Certain issues are being ignored." You have personal feelings on a particular set of issues that you feel current officeholders are ignoring. You want to fix these issues once you are elected. Will you?

"I disagree with the ideological position of the incumbents." You have a philosophical disposition on issues or policies that is basically different from the incumbents. You want to change the direction of policymaking as a result.

"I love politics; it's my passion in life." You are hooked on politics in every manner and form. Involvement in elected office is in your blood.

"I now have the time. Commitment is not a problem for me." For example, you are retired. You have served on advisory boards in the past and it always interested you. Now, you have the time to make even a deeper time commitment.

"This community has done so much for me. I want to give back something in return." You have been successful in your professional life and the community has been supportive of you. You now want to return that support in the form of elected public service.

"I got drafted for the position by the group in which I am involved." Often, candidates have been pressed into service by a local civic group or service organization in which they are involved.

"I ran because no one else would." Lack of competition for municipal elected office sometimes leads a person to declare their candidacy when no one else appears willing.

"We need an elected body that is more representative of the diversity of the community." The city council or town board as currently constituted is not representative of the community as a whole, and you feel your presence as an elected official can elevate the awareness of diversity.

While not reflective of all of the reasons why a person decides to run for municipal elected office, this list does reflect a set of general impressions as to why people decide elected office is meant for them. However, the reasons that prompt a person to run and serve may change once they have been sworn into office and served for some time. Indeed, what happens before an election and afterward can seem like two different worlds.

BECOMING ORIENTED

The newly elected mayor or member of the governing body will have little difficulty finding many voices to tell him or her what to do and what not to do. It is not hard for him or her to find out the composition of the governing body — numbers of members, length of terms, qualifications for election. etc.; it is not long until he or she knows how an ordinance is passed, what the debt limit is, or when approval by the voters at an election is required. But these are not the most perplexing questions. Often what is most important is the hardest thing to learn — how to do a good job.

Beyond all else, the person elected to office at the municipal level must learn to take on the role and mantle of leadership. This means acknowledging the power and need to establish public policy that can have broad impacts within and outside of the municipality. This means taking on responsibility for and being responsive to the needs and concerns of municipal residents. This means being involved in a variety of tasks internal to the organization of the municipality itself.

Put most simply, local elected officials become caretakers of their communities' public life; their deeds can help strengthen local governance and problem solving in ways to make the future brighter; and their leadership can motivate people to work together for a common good — to transform goals and objectives into a positive reality.

MUNICIPAL LEADERS WEAR MANY HATS

University of Michigan Professor Arthur W. Bromage, following his experiences as a member of the Ann Arbor City Council, concluded that a councilmember must wear several hats to meet the responsibilities of the position.

- **Lawmaker.** The adoption of formal policies and local laws, generally known as ordinances, takes up a great deal of time for any municipal elected officeholder. These regulations will have the force of law and cover many policy areas such as land use, liquor licensing, tax policy and community redevelopment.
- **Financier.** Although a municipal staff person may prepare the budget, the final decision rests with the elected official. The buck literally stops with the city council member or town trustee. Tax and spending decisions are critical roles that will be played by any elected official.

- **Employer.** An elected official has duties and responsibilities that may oversee the municipality's workforce. Working conditions, employment agreements, salary and benefit schedules all play a part in this.
- **Constructive critic.** An elected officer oversees the policies that govern the operations and administration of the municipality. This may mean bringing observations and input to municipal administrators to help the city or town run more effectively.
- **Intergovernmental relations.** An elected official must decide, for example, whether to sell water services to fringe areas and also may be asked to represent the city or town viewpoint before state governing bodies and to make policy that determines the relation of the municipality to the federal government.
- **Public relations representative.** An elected official serves as a representative of the community as a whole. Frequent contact with the media and speaking to groups come with the territory.

These examples illustrate only a few of the experiences on the job. The real task is to provide leadership and direction for the community, to decide what needs to be done, and to help prepare the municipality for future generations.

PUBLIC POLICY MAKING

The job of the municipal governing body frequently is stated as, "The governing body sets public policy."

Sound policy decisions are the result of hard work. The policymaking job in a municipality is amazingly complex. It requires from each member of the governing body a belief in the municipality, an understanding of its people, and a concept of what government is, does, could do, and should do.

Sound policy decisions result when elected officials possess determination, imagination, and devotion to the best interests of the public. A member of the governing body who cannot view public interest apart from personal interests is of little help in determining sound public policies. How opinions or feelings may have been expressed during an election campaign might have to be modified once elected.

Each official has his or her own philosophy about what the municipality ought to do or ought not to do. The decision to run for office was no doubt influenced by satisfaction or dissatisfaction with the way in which the municipality was being governed. Upon taking office, however, the official may soon be confronted with many problems that had not previously occurred to him or her.

FINDING OUT WHAT MUST BE DONE

How does a municipal official find out about problems facing the municipality? How does he or she decide what activities or projects the municipality should or should not undertake?

While the elected official already may know of problems or activities that need to be addressed, municipal employees also may have identified problems. Perhaps most important, the official must find out what the people want done. As their representative on the governing body, the official wishes to respond to constituents' concerns about public policy.

The member of the governing body frequently may find that what needs to be done, what the people want done and what is possible to do may not coincide. What needs to be done may be impossible because the people do not want it done; what the people want done may be impossible for various reasons.

PRESSURES ON MUNICIPAL OFFICIALS

Discovering what the people want may be difficult, and the people may not always agree. Without special effort, of course, officials soon will receive expressions of interest or protest in the form of telephone calls, letters to the editor in the local newspaper, protest petitions, and attendance at meetings of the governing body. However, these expressions may or may not reflect the desires or best interests of the community as a whole; rather, they might reflect merely the strong desires of vocal special interest groups.

The elected official truly concerned with representing the best interests of the people will go beyond these expressions and proactively seek opinions and ideas from a wide spectrum of people through informal conversations, discussions with friends and business associates, and speaking engagements. One might assume that the citizens do not care how a problem is resolved unless they express themselves; however, it is important to always keep in mind that a few loud voices on a certain issue may be misleading.

Much of the municipal legislator's work will be to seek public opinion, balance pressures from different interests, and determine what course public policy should take.

KEEPING THE PUBLIC INFORMED

Discovering what the people want done is not a one-way process. Especially at the local level, government is a public matter, and the governing body has a responsibility to the residents of the community to let them know what has been done or will be done.

Statutes set minimum requirements for informing the public. Publication of items such as ordinances, franchises, annual financial statements, and notices of budget hearings is not only required, but provides a way to let the people know about

governmental activities. Exceeding these minimum requirements, however, can greatly increase public interest in local affairs, and build confidence in the municipal government.

A well-informed public results in an improved flow of ideas and opinions, easier law enforcement, and increased understanding of the problems that face the municipal government.

Ways to inform the public are a matter of common sense, and most of the techniques are obvious. Here is a partial listing:

- **Expand personal contacts.** Just as he or she asks for expressions of opinion from personal acquaintances and business associates, a member of the governing body also may use many day-to-day situations to explain what the municipal government is trying to accomplish.
- **Encourage attendance at meetings.** Although citizens can find out easily when meetings of the governing body are held, members of the governing body should be sure that all meetings are given advance publicity to encourage attendance. They also can make sure that anyone attending a meeting has an opportunity to be heard.
- **Establish good relations with the media.** Members of the governing body may find that what they say makes news. Newspapers and radio and television stations can be of real assistance in letting the public know about governmental activities. Most reporters are anxious to do the best possible job in relating activities at the town or city hall. By helping them in this job — by making it easy for them to get the news, by being frank and clear about municipal problems and activities — the governing body can serve the public by keeping the record straight.

By understanding what makes news, an elected official can improve his or her own media relations by anticipating in advance what the news angle will be in any situation, and thus be prepared when the reporter calls. It is not the responsibility of the reporter to keep the official from making erroneous or premature statements.

If your municipality maintains a community access cable television channel, use this vehicle as another way to communicate with the public at large.

CONFLICTS OF INTEREST

Any member of the governing body of a city or town having a "personal or private interest in any matter proposed or pending before the governing body" must disclose the interest to the body and not vote on the matter. Further, the member must refrain from "attempting to influence the decisions of the other members."[1]

In practice, this means that the member having the conflict should announce his or her interest before discussion is commenced on the matter and should not participate in discussions or any voting. One relatively simple way to achieve this is, after disclosing the interest, to leave the room until after all discussion and voting has taken place. The statute does allow the member having the interest to vote on the matter "if his participation is necessary to obtain a quorum or otherwise enable the body to act." However, if this is done, the member must also make a written disclosure to the secretary of state in accordance with a statutory procedure.[2]

The statutes do not define what an "interest in a matter proposed or pending" is specifically, but a general rule of thumb is that if the matter involves anything in which the member has or might have a financial interest, direct or indirect, including an interest in a business that could be placed in a superior competitive position by the action proposed to be taken, such actions may constitute an interest that must be disclosed and may not be voted upon. Obviously, the municipal attorney should be consulted whenever there is any question about whether a member has an interest that requires disclosure and abstention from voting.

Local government officials are not permitted to hold an interest in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees. Excepted from this rule are contracts awarded to the lowest responsible bidder based on competitive bidding procedures; merchandise sold to the highest bidder at public auctions; investments or deposits in financial institutions that are in the business of loaning or receiving moneys; a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract; and a contract with respect to which any local government official has disclosed a personal interest and upon which the official either has not voted or voted notwithstanding the disclosed conflict in order to achieve a quorum or otherwise enable the body to act.[3] Any contract made in violation of these laws can be voided at the insistence of any party to the contract except the officer with the conflicting interest.[4]

The "Code of Ethics" statute,[5] which is applicable to local elected officials, contains many restrictions on the use of public office for private gain. For example, the statute prohibits any use of confidential information for personal financial gain and

1 C.R.S. § 31-4-404(2), § 24-18-109(3)(a).

2 C.R.S. § 31-4-404(3), § 24-18-109(3)(b).

3 *See* C.R.S. § 24-18-201.

4 C.R.S. § 24-18-203.

5 C.R.S § 24-18-101 et seq.

any acceptance of gifts or benefits as a reward or inducement for official action.[6] Additionally, there are criminal statutes that make it an offense to trade in or abuse public office.[7]

ETHICS IN GOVERNMENT

In addition to the statutes, the Colorado Constitution art. XXIX, entitled "Ethics in Government", places restrictions on municipal officials. Amendment 41, as it is more commonly referred to, places restrictions on gifts received by Colorado public officials, government employees, and their immediate family members. Such persons are prohibited from receiving gifts with value exceeding $53.[8] Exception is made for certain circumstances, such as gifts given between personal friends and relatives on special occasions. Amendment 41 also prohibits statewide elected officeholders from lobbying certain state elected officials for pay for two years after leaving office and creates the Independent Ethics Commission (IEC) appointed by elected officials with individual members having investigative and subpoena power.

The Colorado General Assembly passed a statute that permits the IEC to dismiss frivolous complaints that do not allege that the covered employee or official has received the gift for "private gain or personal financial gain." These items include "any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person *seeking to influence* an official act that is performed in the course and scope of the public duties of a public officer, member of the general assembly, local government official or government employee"[9] (emphasis added). The impact of this definition is significant in that it alters the gift prohibition in Section 3 from a crime irrespective of intention to one in which intent to influence is a required element.

A common question has been whether Amendment 41 precludes award of scholarships to covered officials and employees, or their children. Whether treated as a "forbearance" or a "gift or thing of value," scholarships or similar benefits are not considered a violation of public trust "provided the scholarship is awarded using objective criteria" and is not a direct or indirect benefit to covered officials and employees. Additionally, scholarships often are conditioned on future performance (e.g., maintaining a certain grade point average) of the scholarship recipient.[10]

Finally, a local official should check whether his or her municipality has charter or ordinance provisions concerning conflicts of interest, and should consult with the municipal attorney before taking any action that may involve a conflict of interest.

SOME FINAL GUIDEPOSTS

Municipal government is a team operation. No one member can hope to master every phase of governmental activity. Some people, however, are afraid of appearing "green" and subsequently are pressured into approving something they do not understand fully. The newly elected mayor, trustee, or councilmember should not fear appearing to be "green" to the "old hands."

There are many sources of information about municipal government available to the newly elected official. The publications and the information services of the Colorado Municipal League, meetings, institutes and conferences for municipal officials, and journals of the various professional associations of municipal officers and employees all provide basic information about the many problems and activities of municipal government.

In addition, there are specialists and professional consultants who can help with technical problems. Remember, however, that these persons are advisers and that the policy decisions should be left to the elected officials. The elected official must learn to evaluate the advice of specialists.

Overall, the most important job of the governing body is to make policy. It is easy for a governing body to lose sight of its policymaking function by spending most of its time looking down storm sewers or watching demonstrations of new types of equipment.

In the final analysis, no state law, handbook or any other guide can outline adequately the elected official's role in the governmental process. There is no formal requirement that the member of a governing body do anything more than comply with a few written rules. If he or she chooses not to run for re-election, there is nothing to prevent him or her from serving out the term of office doing no more than attending meetings, casting an occasional vote, and avoiding conduct that might be cause for removal. The member of the governing body must decide what his or her role shall be.

Yet, the member of the governing body has a real responsibility to the citizens. Members of the governing body are the trustees and custodians of the privilege of local self-government in this country, and every individual member, regardless of the size of the municipality, is engaged in the vital process of making American democracy work.

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6 *See* C.R.S. § 24-18-104(1).

7 C.R.S. § 18-8-301 et seq.

8 Originally, Amendment 41 prohibited gifts of more than $50. Independent Ethics Commission, Position Statement 11-01 (*Adjustment of the $50 Limit*) adjusted the gift limit to $53 until the first quarter of 2015 pursuant to Colo. Const. art. XXIX, § 3(6).

9 C.R.S. § 24-18.5-101(5)(a).

10 Independent Ethics Commission, Position Statement 08-01 *(Gifts)*.

ESTABLISHING ADMINISTRATIVE MACHINERY

THE MANAGEMENT PROCESS

Good public policy decisions do not go into effect automatically. No matter how much time and careful thought may go into formulating public policy, there is always a management job to be done, and someone or some group must assume the responsibility to plan, organize, coordinate, and control the administrative machinery to make the town or city work. In smaller communities, members of the governing body may become more involved in this administrative process than are officials in other forms of government.

For many years, theorists have attempted to fit policymaking and policy implementation into two neatly divided compartments. The justification was that every decision made in government involved either a "what" judgment (policy determination) or a "how" judgment (administrative execution of the policy). Nevertheless, the decision to build, for example, a sewage disposal system for the municipality (the "what" decision) can hardly be made without also deciding which method of treatment will be most suitable for the municipality's purpose (the "how" decision). Thus, even the theorists now agree that the "what" and the "how" should both be conceptualized as dual parts of a single decision, instead of two separate decisions.

TYPES OF ADMINISTRATIVE ORGANIZATION

Administration of municipal affairs may be carried out by the mayor, appointed administrative officers, or by the governing body. More common is a combination of the three — sometimes supplemented by the use of special boards and advisory committees.

The mayor as chief administrator. In some municipalities, it may be the mayor who hires and fires employees, orders supplies, and checks to see that the streets are cleaned, potholes repaired, and park lawns watered. In these municipalities, department heads report directly to the mayor — not to the governing body — and the mayor may meet with the department heads at times other than at meetings of the governing body. In Colorado, this is not a common form of municipal administration.

Appointed administrative officers. In some municipalities, execution of municipal business rests almost solely with appointed municipal officials. Where there is no coordinating administrative official, municipal administrative responsibility often is divided among independent department heads and other officials. Each department head supervises department employees and activities and reports to the governing body. Approval is necessary before undertaking new projects, and each department concentrates on activities directed by the governing body or of special interest to the department head.

This system of operation, in which no one person is responsible for municipal administration, may engender uncoordinated and inefficient administration. As a result, an increasing number of Colorado municipalities have provided by ordinance for the position of city or town manager, administrator, or superintendent. This person serves as the chief administrative officer, coordinates municipal administration, supervises other employees, and is directly responsible to the city council or board of trustees. This system permits administrative responsibility to be centralized in one full-time employee and it may lead to better coordinated administration and more professional leadership in municipal government. Nationally, Colorado is viewed as a state that strongly supports this approach to municipal government.

Administration by committees. In municipalities where neither the mayor nor any appointed municipal official has the responsibility to direct municipal affairs, the governing body itself must supervise and coordinate municipal administration. This can be done as a collective endeavor; more often, the governing body forms smaller committees that then recommend policies and supervise administration of programs within each committee's sphere of responsibility.

The mayor may appoint members of the governing body to various committees, or the members may choose to organize their own committees and make their own appointments. Either way, each member may serve on one or more committees composed of several members of the governing body. The names and scope of the committees may vary from municipality to municipality, but commonly they include water and sewer, street and alley, police and fire, finance, park and recreation, and health and welfare.

In some municipalities the governing body relies almost entirely on its committee structure to supervise administration of municipal affairs. Under such an arrangement, the street superintendent, for example, would report to the street and alley committee. In practice, the committee chairperson may assume most of the responsibility and control and directly oversee administration within each committee's area of responsibility. Committees provide a way to divide up the work, study activities in greater detail and more closely supervise municipal administration. This system usually requires members of the governing body to devote a great deal of time to committee work, leaving less time and energy to solve overall municipal problems.

Both systems — administration by the governing body and administration by committees — go against modern public management practice, which holds that only one individual should have the responsibility to supervise and coordinate administrative operations. As a result, neither administration by the governing body nor by council committees may be a sound and effective system for supervising and coordinating municipal administration.

BOARDS AND COMMISSIONS

Boards, commissions, and citizen committees can provide the governing body with a great deal of assistance both in recommending public policy and in transforming policy decisions into action. Some are required or permitted by statute, while others are created by ordinance, resolution, or motion. Some are empowered to make administrative decisions, others can only make recommendations to the governing body, and still others are primarily factfinding bodies. Some boards and commissions are established permanently, with members appointed for overlapping terms to add continuity to committee operations, while others are established for a limited time to accomplish a single purpose and cease to exist once their functions are completed.

In some situations, municipal governing bodies may find the use of special boards and commissions to be to their advantage. They may be helpful in analyzing technical problems considered beyond the scope of the governing body. Boards and commissions give the municipality an opportunity to use the talents of local specialists in certain fields and permit citizens with special interests to serve the community in an area of personal concern.

Here is a partial listing of special boards and commissions authorized or required by state law (numbers in parentheses refer to title, article, and section number of the C.R.S. in which the board or commission is authorized):

- Board of Trustees, Police Pension Fund (§ 31-30.5-203);
- Board of Trustees, Fire Pension Fund (§ 31-30.5-202);
- Board of Trustees of Public Libraries (§ 24-90-108);
- Planning Commission (§ 31-23-201 et seq.);
- Zoning Commission (§ 31-23-306);
- Board of Adjustment (§ 31-23-307);
- Local Liquor Licensing Authority (§ 12-46-101 et seq.; § 12-47-103 et seq.).

Others boards or commissions may be set up by the governing body to follow a particular project through to completion. Frequently, citizen committees are appointed to study such things as possible new sources of revenue; the need for new building codes; the need for new municipal facilities such as swimming pools, fire stations, or parks; or the desirability of launching new projects. In many cases, persons who serve on such advisory committees may be carried over onto permanent commissions or boards upon completion of their study projects.

Advantages and disadvantages. There are advantages and disadvantages to the extensive use of special boards, commissions, and citizen committees. They can provide a convenient way to obtain technical advice, and they also may provide two-way access to important areas of public opinion and a way to build and maintain public support.

On the other hand, they are not a substitute for responsible administration, and too many boards or commissions may hamper efficient administration by spreading authority and responsibility too widely. Sometimes the needed information or advice can be better obtained from within the municipality's administrative organization or from professional consultants, making a study committee or advisory committee a cumbersome addition to municipal organization.

BUDGETING

MORE THAN A DOCUMENT

There is a tendency to think of budgeting only in terms of the frenzied attempts to prepare a complicated document in sufficient time to comply with deadlines established by state law. Then, once the budget is filed, it can be forgotten until the next deadline rolls around. Municipal budgeting, however, is a year-round activity that involves not only preparation of a budget document, but also putting the budget into effect. In preparing a budget, the municipal governing body, in effect, promises that the municipality will do a certain amount of work with a certain amount of money. It is an agreement with the taxpayers as to what they will get for their tax money during the coming year.

This taxpayer-governing body agreement is of little value, however, if no attempt is made to carry out the program as promised. This process usually is known as budget execution or budget control. Budget control, properly exercised, is perhaps the most valuable administrative device for seeing that legislatively authorized programs are put into effect. By frequently comparing the budgeted revenues and expenditures with actual figures, the governing body can check its program commitments to see which activities are exceeding budget plans and which are lagging behind.

THE BUDGET AS A WORK PLAN

The purpose of a budget should be obvious — it attempts to keep expenditures within the municipality's estimated income. In simple language, the budget document is a work plan converted to dollars and cents. The budget consists of two parts: a carefully prepared estimate of revenues and a tabulation of the estimated amounts of money required to finance each activity listed.

In budgeting, the governing body makes important decisions about the work program of the municipality. Is a swimming pool more important than storm sewers? Does the municipality need a new library more than it needs extra policemen? Should the potholes be filled or the street completely rebuilt? It is a process by which the governing body determines the

community's standard of living — what the community needs and wants, what it is willing and able to pay, and what services it can expect to receive for its tax dollars.

THE CAPITAL BUDGET

A capital budget is a long-term plan for capital improvements. It usually is prepared along with the annual operating budget. After an estimate of revenue available for public improvement is prepared, a list is made of needed capital improvements in order of priority for the planning period. The planning period is generally for about five years, although there is frequently a sketchy overall plan prepared for a longer period.

While the capital budget covers several years, it should be revised as needed and reenacted annually. A capital improvement budget is particularly necessary when the municipality wants to take advantage of state laws authorizing the appropriation and accumulation, over a period of years, of a capital-improvements fund for expenditures on public works projects.[11]

Every municipality should have a capital budget. By planning for public improvements, the governing body may be able to minimize problems, avoid crash programs, and, perhaps, avoid financial embarrassment. Capital budgeting forces the municipality to make the more important big purchases and capital improvements first and helps provide a stabilized tax rate.

11 *See* C.R.S. § 31-15-302(1)(f)(I).

CHAPTER 6:
MEETINGS OF THE GOVERNING BODY

This chapter provides an overview of the basic legal requirements relating to meetings of city councils and town boards of trustees. For additional information, refer to CML's 2008 publication, *Open Meetings, Open Records: Colorado's Sunshine Laws and Municipal Government*

MEETINGS: GENERAL AND LEGAL REQUIREMENTS

REGULAR, REQUIRED MEETINGS

"Regular" meetings are those meetings of the municipal governing body that occur at fixed or established intervals — for example, the second and fourth Wednesdays of each month. They are open to the public. Although regular council and board meetings are customary, the statutes do not require either town boards or city councils to meet at regular intervals. However, generally, the municipal governing body cannot take any official action except at a duly convened meeting at which a quorum is present. Considering this rule and the Open Meetings Law, it is unlikely a council or board could functionally exist if it refrained from holding regular meetings.

For statutory cities, only two meetings actually are required by state law: The initial or organizational meeting held (depending on when terms of councilmembers commence) either following the survey of election returns, or the first Monday after the first Tuesday in January following the regular election of councilmembers,[1] and the last monthly meeting before the regular municipal election at which the governing body must take action, if any, to adjust salaries for officials elected for the next regular term.[2] Otherwise, state law merely requires that councils in statutory cities "shall determine the times and places of holding their meetings, which shall at all times be open to the public."[3]

For statutory towns, the statutes only make one specific reference to board meetings, requiring that at the first meeting after the regular election, a mayor pro tem be chosen.[4] As with statutory cities, regular meetings of town board of trustees are customary — but not required — by state law.

SPECIAL MEETINGS AND WORK SESSIONS

A special meeting or a "work session" is a separate session that is held at a time different from that of the regular meeting. Special meetings are convened most often to consider only one or two items of business that require the immediate action of the council or board prior to the next regular meeting.

No state law governs the procedure for calling special meetings in statutory towns; however, the method for doing so is often prescribed by local ordinance.

In statutory cities, state law provides that the mayor and any three members of the city council may call a special meeting. Each member of council must be given notice of the special meeting, either "personally served or left at his usual place of residence."[5] For both statutory towns and cities, all meetings, including special meetings or "work study sessions," must "at all times be open to the public."[6]

TIME AND PLACE

The time and location of regular meetings usually are specified by ordinance. For special meetings, they are provided in the same notice that is required for calling the meeting. The amount and complexity of any governing body's business usually will determine the frequency of its meetings. Generally speaking, Colorado's municipal governing bodies meet once a week in large cities, twice a month in medium-size cities, and monthly in towns.

The location of the governing body's meeting is not addressed specifically in state law; however, it generally is accepted that council and board meetings should be held within the corporate limits of the municipality. While most Colorado municipal governing bodies have designated permanent chambers in a city or town hall, no state statute prohibits them from holding meetings elsewhere. This may sometimes even be desirable, as neighborhood settings often may facilitate citizen participation better.

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1 C.R.S. § 31-4-105, § 31-4-207(1).

2 C.R.S. § 31-4-109.

3 C.R.S. § 31-4-101(2).

4 C.R.S. § 31-4-303.

5 C.R.S. § 31-4-101(2).

6 C.R.S. § 31-4-101(2), § 24-6-402. For more information on Colorado's open meetings laws, *see Open Meetings, Open Records*, *supra* note 1.

If a municipal governing body is to give its top performance, the interior setting of meeting places should be as functional and pleasant as possible. Some considerations might include size and physical layout, acoustics, arrangements of seating, and decor. Usually the United States and Colorado flags, as well as the municipality's seal, are displayed.

When beneficial, it is permissible for the governing body to adjourn an ongoing meeting to another time, at another designated location. Since an adjourned meeting is, in fact, a continuation of an initial meeting, any business that may have been transacted at the original meeting may be conducted at the adjourned meeting.

MEETINGS: PREPARATION AND PROCEDURE

QUORUM

Before the municipal governing body may proceed to its first item of business, the presiding officer must determine that a quorum is present. A quorum is a majority of all the members of the governing body, and it is a number that, if present, is sufficient to transact most government business. If a council or board member knows that he or she will not be able to attend a meeting, the presiding officer should be so informed in advance of the meetings so that if a meeting will need to be adjourned for lack of a quorum, other councilmembers, staff, and citizens are not inconvenienced by being assembled needlessly. If a quorum cannot be obtained, the presiding officer calls the meeting to order, announces the absence of a quorum and entertains a motion to adjourn.[7]

In statutory towns, assuming no positions on the board are vacant, four voting members out of six (or three members out of four) constitute a quorum.[8] In cities, again assuming no positions on the council are vacant, the presence of a number of members equal to the number of wards in the city plus one additional member will constitute a quorum.[9] For city–manager cities, the seat of the nonvoting city manager is not counted for purposes of establishing quorum,[10] except in one situation. If the city has adopted the council–manager form of government with the mayor elected by the voters, and the council has adopted a resolution making the mayoral position nonvoting, then a number of members present equal to the number of wards and two additional voting councilmembers constitutes a quorum. Once a quorum is established, most matters may be disposed of by a majority vote of those present. However a "simple" quorum, as just described, may not be sufficient to proceed with all governmental actions. For example, ordinances or resolutions involving the appropriation of money "shall require for their passage or adoption the concurrence of a majority of the governing body of any city or town" — which number may be more then those who currently are present at the meeting in the case of a "simple quorum."[11] This majority includes the mayor, unless the board or council has adopted a resolution making the mayor a nonvoting member of the body whose position is not counted for the purposes of determining a quorum.[12] Practically speaking then, the only way to pass questions involving the appropriation of money in cases of a simple quorum would be by the unanimous vote of all present.[13] This is also true when the council or board is seeking the "adoption of an ordinance, resolution, or order for the appropriation of money or the entering into of a contract by the governing body," and in these cases "the yeas and nays shall be called and recorded."[14] In all cases of doubt, the municipal attorney should be consulted.

In the absence of a quorum, any business transacted and actions taken by the governing body will be null and void. In fact, the only action that may be taken by a council or board in the absence of a quorum is a motion to adjourn.

NEED FOR RULES OF PROCEDURE

Every legislative body should adopt a set of rules by which to operate. These rules can be simple or detailed; they can incorporate *Robert's Rules of Order*[15] or any other set of prepared rules; or they can be established simply on their own. Such rules can guide the council or board, make the legislative process more stable and predictable, and reduce disputes concerning correct procedure.

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7 *Id.*

8 C.R.S. § 31-4-301(3), § 31-4-301.5. In towns where the position of the mayor has been stripped of its ordinary voting powers by ordinance, the ordinance also may provide that the mayor's presence will not be considered for the purposes of determining quorum. C.R.S. § 31-4-302.

9 C.R.S. § 31-1-101(4), § 31-4-107(1). Again, as with towns where the position of the mayor has been stripped of its ordinary voting powers by ordinance, the ordinance also may provide that the mayor's presence would not be considered for the purposes of determining quorum. C.R.S. § 31-4-102(3).

10 C.R.S. § 31-1-101(4).

11 C.R.S. § 31-16-103.

12 *See* C.R.S. § 31-4-102(3), § 31-4-302.

13 A simple quorum is slightly more than half of the total number of the elected board or council, and the passage of an appropriation of money requires the concurrence of slightly more than half the total number of the elected board or council — the same number.

14 C.R.S. § 31-16-108.

15 Henry M. Robert, et. al., Robert's Rules of Order Newly Revised (11th ed. 2011) [hereinafter Robert's Rules of Order].

Rules of procedure not only protect the minority from arbitrary use of power by the majority, they also protect the majority from the minority's capricious use of procedure. Skillful use of rules of procedure can help reduce interpersonal friction, allow for better decision-making, and increase the credibility of the persons using the rules.

ADOPTING RULES OF PROCEDURE

State law specifically empowers statutory cities to determine their own rules of procedure;[16] presumably, although it is not mentioned in the statues, towns have this same power. However, regardless of the statutory authority awarded municipalities to adopt their own rules of order, state law requires a few, specific procedures that must be followed by councils and boards — including the open meetings requirements[17] and legal requirements for voting on appropriation of money or the entering into of a contract by the governing body.[18] In addition to these state mandates, local charters, ordinances, and resolutions also may stipulate specific ways in which certain items of business must be transacted.

Specific legal requirements are the foundation of council or board rules of order. While rules of order do not have to contain the exact language of legal requirements, they must reflect the intention of state and local law. Furthermore, no rule can conflict with any of the legal requirements of the municipality. Beyond this, a city council or town board is virtually unlimited in its powers to prescribe its own rules of order.

However, effective rules of order must not only follow legal requirements but ideally should be tailored to the specific needs of the individual governing body. Before adopting new rules of procedure, some thought should be given to the current manner in which meetings are being conducted and any problems that may be arising there from.

Drafting rules of order is a task that must be accomplished by each city council and town board. For more information and sample rules of order, see *Robert's Rule of Order*[19] or contact CML or other municipalities to obtain samples.

GENERAL NECESSITY FOR MEETINGS; OPEN MEETINGS REQUIREMENTS; NOTICE OF MEETINGS

Official action cannot be taken by a municipal governing body except at a valid meeting held in compliance with the Colorado Open Meetings Law, codified at C.R.S. §§ 24-6-401 to 402.[20] Specifically, no resolution, rule, regulation, ordinance, or formal action of a "local public body" is valid unless taken or made at a meeting that meets the requirements of the Open Meetings Law.[21]

A "local public body" includes any "board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state, and any public or private entity to which a political subdivision of the state, or any official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body."[22] Home rule municipalities are included in the definition of "political subdivisions."[23] The word "meetings" is defined broadly in the statute as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication."[24]

There are four different types of meetings contemplated by the statute: open meetings; meetings requiring notice; meetings requiring minutes; and executive (closed) sessions.

Open meetings. Open meetings are gatherings "of a quorum of three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken."[25] By this statutory provision, these meetings are declared to be public meetings open to the public at all times.

Meetings requiring notice. "Full and timely notice" is required prior to "any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance or is expected to be in attendance."[26]

Pursuant to C.R.S. § 24-6-402(2)(c), a local public body is deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 hours prior to the holding of the meeting. The public place or places for posting such notice must be designated annually at the local

16 C.R.S. § 31-4-107(1), § 31-4-209.

17 *See generally Open Meetings, Open Records*, *supra* note 1.

18 C.R.S. *See* § 31-16-108.

19 Robert's Rules of Order, *supra* note 8.

20 *See generally* McQuillin, Mun. Corp. § 13.10 (3d ed. 1996).

21 C.R.S. § 24-6-402(8).

22 C.R.S. § 24-6-402(1)(a).

23 C.R.S. § 24-6-402(1)(c).

24 C.R.S. § 24-6-402(1)(b).

25 C.R.S. § 24-6-402(2)(b).

26 C.R.S. § 24-6-402(2)(c); see also, *Bd. of County Commr's, Costilla Cnty. v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004).

public body's first regular meeting of each calendar year. The posting must include specific agenda information when possible.[27] The statute contemplates that there are other means of satisfying the "full and timely" notice requirement.

In addition, all members of the governing body should be notified of all meetings, whether or not such notice is required by statute. C.R.S. § 31-4-101(2) expressly requires that notice of special meetings, called by the mayor and three councilmembers in mayor–council cities, be delivered personally to all councilmembers or left at their residences.[28]

Typically, both statutory and home rule municipalities have local provisions imposing specified notice procedures for special meetings. Frequently, regular meetings are on a schedule established by ordinance or rule of the governing body. Although not specified by statute, it is considered advisable to make the purpose of a special meeting fairly specific and to confine the meeting to the matters described in the notice.

Meetings requiring minutes. Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and recorded promptly, and such records shall be open to public inspection.[29]

Executive sessions. The members of a local public body, upon the affirmative vote of two-thirds of the quorum present, may hold a closed executive session at a regular or special meeting, for the purpose of considering a limited number of matters.[30] No adoption of any proposed policy, position, resolution, rule, regulation, or formal action can occur at an executive session that is not open to the public.[31] Prior to convening an executive session, the local public body shall announce to the public the specific statutory provision authorizing the executive session, as well as the topic to be discussed.[32] This provision requires the public body to identify the matter to be discussed "in as much detail as possible without compromising the purpose for which the executive session is authorized."[33]

Generally, an executive session can be held to consider the following topics: transactions involving real or personal property interests (unless held for the purpose of concealing a member's interest in the transaction); specific legal advice in a conference with an attorney; matters required to be kept confidential by federal or state law, rules, and regulations; specialized details of security arrangements or investigations; matters involving negotiations and negotiators; personnel matters (unless requested to be open by the employee or employees to be discussed); and documents protected by the mandatory nondisclosure provisions of the Open Records Act.[34] Additionally, many home rule charters contain open meeting requirements.

For a more detailed discussion of the procedures in preparation for and recording of executive sessions, refer to CML's *Open Meetings, Open Records: Colorado's Sunshine Laws and Municipal Government* (2008) or contact your municipal attorney.

THE PRESIDING OFFICER

The "presiding officer" is the director and leader of any meeting of the municipal governing body.
It is the presiding officer's responsibility to see that the meeting moves forward in an orderly fashion, that discussion is guided and controlled, and that the meeting runs as smoothly as possible.

In statutory cities and towns, the mayor is the presiding officer by law.[35] The statutes also provide for the selection of a mayor pro tem or president pro tempore to be chosen by and from within the board or council, who serves as the presiding officer of the governing body in the mayor's absence.[36] If both the mayor and the mayor pro tem are absent, the governing body may appoint a temporary presiding officer.[37] The municipal clerk generally starts the process by establishing the presence of a quorum and calling the meeting to order; the members then present choose one of themselves to serve as the temporary presiding officer.

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27 C.R.S. § 24-6-402(2)(c).

28 See *Greeley v. Hammon*, 28 P. 460 (1891). When there was no record that such notice was properly served, notice was inferred from the fact of attendance of all councilmembers at the special meeting, and the fact that the clerk's record of the purpose of the special meeting showed that it was called to transact the very business which was transacted.

29 C.R.S § 24-6-402(2)(d)(I).

30 C.R.S § 24-6-402(4).

31 *Id.*

32 *Id.*

33 *Id.*

34 C.R.S. §§ 24-6-402(4)(a) to (h).

35 C.R.S. § 31-4-102(3), § 31-4-207.5; *see* § 31-4-302.

36 C.R.S. § 31-4-103(2), §§ 31-4-207(1) to 31-4-207(2), § 31-4-303. For towns, the choosing of the mayor pro tem is mandatory and must take place at the first meeting of a newly elected board of trustees. See C.R.S. § 31-4-303.

37 C.R.S. § 31-4-103(1), § 31-4-207(1)–207(2), § 31-4-303.

Duties of the presiding officer. The presiding officer has the principal duty to maintain order and decorum in the meeting of the governing body. *Robert's Rules of Order Newly Revised* has broken down this general duty into 10 separate duties:

1. Call the meeting to order and ascertain the presence of a quorum.
2. Announce and maintain the agenda.
3. Recognize members entitled to the floor.
4. State, take the vote, and announce the results of the vote on all questions legitimately put before the body.
5. Refuse to recognize obviously frivolous or dilatory motions.
6. Enforce procedural rules pertaining to debate, order, and decorum.
7. Expedite business within the procedural guidelines adopted by the body.
8. Decide all questions of order, subject to appeal or, if in doubt, submit them to a vote of the body.
9. Respond to inquiries on parliamentary procedure or factual information relevant to the proceedings.
10. Upon the adoption of a motion to adjourn, or in the case of a sudden emergency, declare the meeting adjourned.[38]

City council and town board meetings are formal meetings; as such, above all, the presiding officer should know the council's or board's rules of procedure and parliamentary law as well as how to apply them. It is the presiding officer's duty to see that all members know and understand the rules being applied.

A presiding officer who is unfamiliar with parliamentary procedure or who wishes a refresher course on procedure might consider attending a workshop, such as the CML Elected Officials' Workshop, which includes a session on parliamentary procedure.[39] He or she also might consider obtaining a copy of *Robert's Rules of Order Newly Revised* or contacting a registered parliamentarian for assistance.

"The chair." The presiding officer may refer to himself or herself as "the chair" and may say "the chair requests" or "the chair rules." "The chair" is an impartial, impersonal head and is both the first servant of the governing body as well as its leader. Other members of the board or council should address the presiding officer as "Mayor — ," or "Mr. Chairman" or "Madam Chairman," and direct all questions to "the chair."

A certain degree of formality may give dignity to the proceedings and promote more confidence in citizens when they witness their municipality being governed in an orderly and democratic manner. Likewise, the presiding officer and other members of the governing body should refrain from referring to each other or to others attending the meeting in an informal manner — this practice also will increase respect for the governing body.

Successful presiding. The success of the presiding officer may depend upon his or her ability to remain impartial and to keep business moving. Frequent displays of partisanship or favoritism risk destroying members' and citizens' respect for the presiding officer of the governing body.

Successful presiding therefore involves walking a tightrope between letting members direct the meeting themselves on the one hand and authoritatively dictating how the meeting must proceed on the other. A democratic style of presiding — rather than a laissez-faire or authoritarian style — is usually most effective and productive in small groups such as city councils and town boards. Using such a style, a presiding officer encourages members of the council or board to express themselves, soothes ruffled feathers, reduces tension, and keeps the council or board from wandering away from the task at hand. A democratic leader decides when it is necessary to step in to get a group off dead center, to reduce conflict or tension, or to raise a significant issue. A democratic leader suggests, asks, redirects summarizes, and pacifies. Most of all, a democratic leader is concerned with developing cohesiveness within the group.

It should be noted that in all forms of cities and towns, the mayor is more than just the presiding officer; the mayor also is a member of the governing body. As such, the mayor has a right to participate in discussion, whether or not the mayor is a voting mayor. Many mayors, however, feel that participating in discussion detracts from their role as presiding officer — that is, from their need to be impartial and to encourage full participation from other council or board members. To alleviate these problems, many mayors will speak only when they feel strongly about an issue, and then they attempt to limit their participation to brief remarks near the end of the discussion. However, whether and to what extent a mayor chooses to participate in discussion is a matter of style rather than of law.

Motions. Many individuals are familiar with the use of motions in the proceedings of deliberative bodies — motions are nothing more than a formal procedure for taking action. Some types of motions may be brought up at any time, while others are out of order at certain times. Some motions ordinarily require a second, while others do not. The modern trend has been away from requiring seconds, although keeping a requirement for seconds ordinarily is not out of order. As with all other rules of procedure, the presiding officer needs to be familiar with the particular rules regarding motions that the governing body has adopted.

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38 Robert's Rules of Order, *supra* note 8, at 449-450.

39 For more information on workshops, visit CML's website, *www.cml.org,* or call at 303-831-6411.

Motions that begin consideration on new matters are usually referred to as "main motions." They are subject to debate, amendment or withdrawal before final consideration. As a general rule, main motions may be considered only one at a time. Attempts to bring up new main motions are out of order while previous ones are still being considered.[40]

The term "secondary motions" apply generally to motions other than main motions, and one subset of these is "subsidiary motions." By their nature, subsidiary motions propose to take some action on main motions. Subsidiary motions include proposals to amend, table (i.e., kill), postpone, limit discussion of, or refer the proposal in the main motion to a committee for further study. Only one subsidiary motion may be considered at any given time, and the subsidiary motion must be disposed of before returning to consideration of the main motion. Withdrawal of a main motion automatically withdraws all pending secondary motions on the same proposal.[41]

Another class of secondary motions is "privileged motions." Privileged motions may be brought up at any time and, once raised, must be decided before returning to other business under consideration. Motions to adjourn, recess, set the time and place of the next meeting, or keep the meeting to the agenda or schedule are all examples of privileged motions. Questions on personal privilege, parliamentary procedure, and certain basic information (such as a restatement of the motion) usually are considered privileged motions.[42]

The last class of secondary motions are called "incidental motions." These usually relate to the main motion. Examples of incidental motions include motions to enforce or suspend the rules, objections to the main motion, and requests for a show of hands vote.[43]

For the proper presentation and disposition of most motions, *Robert's Rules of Order Newly Revised* suggest 10 steps that should be followed:

1. A member addresses the presiding officer.
2. The presiding officer recognizes the member.
3. The member proposes a motion.
4. Another member seconds the motion.
5. The presiding officer determines whether the motion is in order.
6. If in order, the presiding officer states the motion.
7. The council or board discusses or debates the motion.
8. The previous questions is called (i.e., a request for a vote is made).
9. The presiding officer restates the motion and takes the vote on the motion.
10. The presiding officer announces the results of the vote.[44]

Debate. The term "debate" is a general term that applies to all discussion in a council or board meeting of the merits of any pending motion. Once a motion has been made, the presiding officer restates the motion then calls for discussion or debate if the motion is debatable. Regarding the amount and type of debate permitted, motions usually are classified in one of three ways: undebatable motions, motions requiring restricted debate, and motions open to full debate.

Once a motion has been brought before the council or board, the chair first turns to the member who made the motion to see if he or she desires discussion. Although other members of the body may have addressed the chair, it is the bringer of the motion who is entitled to speak first if he or she claims the floor before anyone else has been recognized.[45]

After the bringer of the motion has been allowed to speak, the floor thereafter assigned according to the following rules:

- Each member of the council or board has a right to speak on every debatable motion before any action is taken; the presiding officer cannot close debate so long as any member who has not exhausted his or her right to debate desires the floor, except by a two-thirds vote of the governing body.
- While debate on a main motion is under way, amendments and subsidiary, privileged, and incidental motions may be introduced (if they are in order), debated (if they are debatable), and disposed of.
- If the city council or town board has no special rule to limit the length of speeches, a member may speak as long as he or she wishes. Even if a rule is established to limit the length of speeches, it temporarily may be made more or less restrictive — either for an entire meeting or for the pending question only — by the adoption of a main motion by two-thirds vote of the council or board members present.
- Unless the governing body has a special rule to the contrary, no member may speak more than twice on the same question during one meeting. Each debatable motion, however, is a separate question as it relates to debate. If, for

40 Robert's Rules of Order, *supra* note 8, at 112.

41 *Id*. at 297.

42 *Id.* at 66.

43 *Id.* at 70-72.

44 *Id.* at 32-57. Some motions, particularly privileged and incidental classes, do not require (or allow) this step.

45 *Id.* at 42. All main motions and certain other motions are entitled to full debate.

example, a member has exhausted his or her right to speak on the main motion, he or she may still speak on a motion to amend the main motion. Also, merely asking a question or making a brief suggestion is not considered debate.

- A member cannot make a second speech on a question until every member who wants to speak on it has had an opportunity to do so.

Additionally:

- members of the council or board should confine their comments to the merits of the pending question;
- members should refrain from speaking against their own motions;
- members should refrain from reading reports, quotations, etc., without permission of the council or board; and
- speakers should yield the floor to the chair whenever the chair interrupts to give a ruling or information, or to otherwise speak.

When the debate appears to be over, the chair then asks, "Are you ready for the question?" If no one indicates a desire to continue discussion, the chair puts the motion to a vote. However, as explained earlier, the chair cannot close the debate as long as any member who has not exhausted his or her right to speak desires the floor, unless it is by order of the assembly, which requires a two-thirds vote of the council or board members present.

If, for some reason, a member did not have sufficient opportunity to answer before the voting begins, he or she has a chance to assert that right any time before the vote is completed and the results announced. If there is discussion after the vote begins, the presiding officer must call the vote again, since members may have changed their mind during the discussion. Debate is closed finally and completely by the announcement of the vote.[46]

Citizen participation. Council and board meetings have a special quality that may require an established procedure to channel citizen participation. In contrast to their counterparts at the state or national level, council and board meetings are open arenas for discussions between the elected officials and their electors. Whereas citizens are not allowed to address the full assembly of either Congress or the state legislature, they usually may do so at council and board meetings. Also, whereas Congress and state legislatures normally use committees to collect information from citizens, municipal councils and boards normally do so as a body of the whole during their regular meetings.

Direct citizen participation generally takes two forms, public hearings and public comment. Public hearings are either special meetings of a governing body or part of the agenda of a regular meeting of the governing body. Public comment differs from a public hearing in that it is often a regular item on the agenda of a meeting of the board or council and the speakers making comments may address any topic they desire (as opposed to public hearings, which are called to address specific topics).

Public comment at meetings and public participation generally should be welcomed and encouraged just as citizens generally should be encouraged to attend council and board meetings. Citizen participation enables council and board members to learn what the public is thinking about a particular problem and what problems are specifically and generally important. Citizens with a special knowledge or area of expertise may even be invited specially to speak at public meetings.

While this input is often critical to the proper functioning of the municipal government, it must nevertheless be regulated to prevent it from overwhelming the operation of the governing body and its meetings. Public participation will remain a positive element if the governing body adopts a few simple rules. These may include, but are not limited to, requiring the signing of a registration list (available until public comment ends); adopting an order of speaking (usually first come, first speak); and adopting time limits (either for individual speakers or the total period of comments).

One perennial question regarding public participation involves the legality of noncitizen participation. With the exception of annexation hearings, the decision of whether or to what extent to allow noncitizen participation in city and board meetings is within the sole discretion of the board or council.[47] To avoid confusion or inflamed tempers, governing bodies may wish to adopt some policy as to whether nonresidents, including "expert" speakers, may address them.

Voting. The act of voting in meetings includes both procedural as well as some general legal considerations.

As touched on earlier, when debate on a given motion concludes or threatens to repeat itself, the chair should ask, "Are you ready for the question?" Providing that no one expresses a desire to continue debate, the chair then will put the measure to a vote. At that point the motion is restated and the vote is taken.

The method of taking and tabulating the vote will vary according to the type of matter being voted on. Motions and ordinary measures that require only a simple majority to pass (including most ordinances and resolutions), are adopted by a "voice vote" unless the governing body has adopted rules to the contrary. In a voice vote, the chair asks those in favor to signify by saying "aye," those opposed by saying "nay." The chair judges whether the ayes or nays are the majority and, if no

46 *Id.* at 44.

47 C.R.S. § 31-12-109. The statute requires that "any person" may be allowed to appear and present evidence of any matter to be determined by the governing body at the hearing.

objection is made, the vote is so recorded. If there is an objection — usually a motion for division of the body — a roll-call vote must be taken.[48]

Some noncontroversial matters, such as the approval of the minutes of the last meeting, may be approved by general consent. The chair simply states that, "If there is no objection (pause) the action will be taken." If no objection is made, the action is recorded as having passed by consent of the body. An objection will cause a voice or roll-call vote to be taken.

The other commonly used method of voting is the "roll call" method. For statutory towns and cities, state law explains that,

> *On the adoption of an ordinance, resolution, or order for the appropriation of money or the entering into of a contract by the governing body of any city or town, the yeas and nays shall be called and recorded, and the concurrence of a majority of the governing body shall be required.*[49]

This provision has the effect of requiring a roll-call vote on all matters that affect the funds of the city or town. A roll-call vote proceeds by the chair or the clerk calling the name of each governing body member individually and the member responding either aye or nay. The individual votes thereby are recorded. Usually the roll is called alphabetically; however, the governing body may adopt any order it wishes. Some believe always calling the roll alphabetically is unfair, and therefore use a rotating list, such as one where the member that votes last on one roll call votes first on the next, etc.

One other general consideration in voting that sometimes arises is the issue of who is entitled to, or required to, vote. On the first point, except for managers in the case of council–manager cities and mayors in the cases of boards or councils that have limited the mayor's right to vote (see below), all members of the board or council are entitled to vote. While there are no statutes that require members of boards or councils to vote, some municipalities have adopted rules that require nonconflicted members to vote or that allow members to be excused only in certain situations.[50] The general rule of law is "[i]f a quorum is present, [a member's] refusal to vote will not defeat action,"[51] and that a trustee or councilmember must vote against a measure to indicate an intention to vote for its defeat.[52] Colorado state law provides that "[u]nless otherwise specifically provided by statute or ordinance, all [non-appropriative action] of the governing body upon which a vote is taken shall require for adoption the concurrence of a majority of those present if a quorum exists."[53] The common-law interpretation of this phrase is simply "present and voting."[54]

Long ago, the Indiana Supreme Court described the reasoning for this interpretation as follows:

> *The mere presence of inactive members does not impair the right of the quorum to proceed with the business of the body. If members present desire to defeat a measure, they must vote against it, for inaction will not accomplish their purpose. Their silence is acquiescence, rather than opposition. Their refusal to vote is, in effect, a declaration that they consent that the majority of the quorum may act for the body of which they are members.*[55]

The Colorado Supreme Court adopted this position early last century in the case of *People ex rel. Sanders v. Henrich*, holding that, "the weight of authority is to the effect that a majority vote need not be a majority of all those present, if [the measure] has a majority of those voting and a quorum is in fact present."[56] In sum, when only a majority of those present is required, only those *actually voting* affect the outcome of the vote.

For both mayor–council cities and towns, statutory provisions set forth the alternative procedures available regarding a mayor's right to vote. By statute, the mayor has the same voting powers as any member of the council or board.[57] However, the city or town may provide by ordinance that the mayor shall not be entitled to vote on any matter before the council or board except in case of a tie vote. If such an ordinance is adopted, it must also provide that any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract are subject to disapproval by the mayor under the procedure outlined in C.R.S. § 31-16-104.

In council–manager cities, C.R.S. § 31-4-207.5 provides that the mayor (council chair) votes as a councilmember. By statute, the city manager has the right to attend council meetings and to engage in discussion, but does not have a vote.[58] In home rule municipalities, the charter or ordinance normally will cover these matters.

48 *See generally* Robert's Rules of Order, *supra* note 8, at 54-56.

49 C.R.S. § 31-16-108.

50 Of course, in situations in which a conflict of interest exists, a member may not be permitted to vote by state law. C.R.S. § 24-18-109.

51 McQuillin, Mun. Corp. § 13.42 (3d ed. 1996).

52 62 C.J.S. Mun. Corp. § 301 (2012).

53 C.R.S. § 31-16-103.

54 62 C.J.S. Mun. Corp. § 301 (2012).

55 *Rushville Gas Co. v. Rushville*, 121 Ind. 206, 206 (1889).

56 *Sanders v. Hendrick*, 27 P.2d 493, 494 (Colo. 1933).

57 C.R.S. § 31-4-102(3) and § 31-4-302.

58 C.R.S. § 31-4-214.

CHAPTER SEVEN:
MUNICIPAL HOME RULE IN COLORADO

INTRODUCTION

Historically, municipalities throughout the nation have been viewed as "creatures of the state," dependent upon the state for their creation and for their continued existence — the so-called "Dillon's Rule." As a result of this viewpoint, municipalities often were allowed to exercise only those powers expressly granted to them by the state, those necessarily implied from or incidental to their expressed powers, and those essential to the purposes of the municipality. Accordingly, state legislatures decided when and how municipal governments should be organized, what powers they could or must exercise, and the procedures to be followed in the exercise of those powers.

This viewpoint, when combined with the rapid urbanization of the nation in the late 1800s, created hardships for some of the nation's municipalities. Problems arose that often could not be solved under existing state statutes. Where this was the case, the municipality was forced either to ignore the problem or to wait until the state adopted legislation empowering the municipality to act. In addition, some municipalities found that state legislatures took too great an interest in municipal local, internal affairs. Dissatisfaction with municipal dependence on state legislatures and with undue legislative interference in municipal affairs led to the adoption, by the citizens of some states, of the concept of home rule.

The nature and scope of home rule differs from state to state, and between counties and municipalities. The following pertains only to home rule as it exists for municipalities in Colorado.

In Colorado, municipalities have constitutional functional home rule powers reserved by the people in art. XX of the Colorado Constitution, which reserves for citizens of home rule municipalities "the full right of self government in local and municipal matters." Colorado counties, on the other hand, have constitutional structural home rule pursuant to art. XIV sec. 16 of the Colorado Constitution.

WHAT IS MUNICIPAL HOME RULE?

In general, municipal home rule is based on the theory that the citizens of a municipality should have the right to decide how their local government is to be organized and how their local problems should be solved.

The right of home rule usually is granted to municipalities by one of two methods: "constitutional" home rule, by which the right is granted directly to municipalities by the citizens in the state constitution; and "legislative" home rule, by which the right is granted to municipalities by the legislature in the statutes. These two methods differ in that constitutional grants of home rule are less subject to change since state constitutions are more difficult to amend than are state statutes.

There are two types of home rule: structural and functional. "Structural" home rule means that the citizens have the right to decide the form, or administrative structure, of their government. "Functional" home rule means that the citizens have the right to decide not only the form or structure of their government but also, within limits, what powers and functions the municipality shall exercise and how they shall be exercised.

COLORADO'S FORM OF HOME RULE

In Colorado, the original adoption of home rule seems to have resulted primarily from dissatisfaction with legislative interference in the affairs of Denver. In 1861, Colorado became a territory and the City of Denver was incorporated under a special charter. During much of the next 40 years, Denver appeared to some to be the "football of the political party in power at the state capitol." Its charter was being revised continually by the legislature. Independent boards were created by the legislature to govern various areas of Denver services. The governor — rather than officials or citizens of the city — appointed members of those boards.

Popular dissatisfaction surrounding the legislative treatment of Denver developed in 1901 into the "home rule" movement. This movement culminated in 1902, when Colorado citizens overwhelmingly approved art. XX as an amendment to the Colorado Constitution. Art. XX consolidated the City and the County of Denver into one entity, granted the new entity the right to adopt a home rule charter, and provided in Sec. 6 for the adoption of home rule charters by certain other Colorado cities.

In the decade following 1902, however, the Colorado courts took a sometimes restrictive view of the home rule powers granted in art. XX. Partly as a result of this judicial attitude, sec. 6 of art. XX was amended substantially in 1912 to provide a broader, clearer statement of home rule powers and to extend the right of home rule to any Colorado city or town having a population in excess of 2,000.

In 1970, as part of an overall effort to modernize local government in Colorado, art. XX was again amended by the addition of a new sec. 9. In general, sec. 9 permitted any municipality, regardless of size, to adopt a home rule charter; permitted the adoption of a home rule charter at the time of incorporation; and required the legislature to establish procedures for adopting, amending, and repealing charters for existing and prospective home rule municipalities.

In 1972, the Colorado General Assembly implemented sec. 9 of art. XX by enacting the Municipal Home Rule Act of 1971.[1]

HOME RULE POWERS

SOURCES OF POWER TO ACT

The manner of determining whether a municipality has the power to act in a certain area is different for home rule and statutory municipalities.

Statutory municipalities must have a specific grant of authority, either from the state constitution or the state statutes, in order to act.

In matters of statewide concern, a home rule municipality also must have a specific grant of authority to act. However, a home rule municipality, in local and municipal matters, does not need a specific grant of authority; but, if there is a limitation on its ability to act in the Colorado Constitution or in its own charter, it cannot act. In other words, a home rule municipality does not need a specific grant of authority to act — it has the authority to act in local and municipal matters unless there is a specific limitation in the Constitution or charter. This is the reason home rule charters are considered documents of limitation. Because home rule municipalities derive their authority to act from the constitution, terms in the charters limit the general constitutional authority.

Failure to comply with a charter limitation renders the action taken invalid.[2]

LIMITATION ON POWER TO ACT

Sec. 8 of art. XX provides that art. XX supersedes all other constitutional provisions. However, several state constitutional provisions have been interpreted by express language or by the courts to supersede home rule powers.[3]

A home rule municipality generally can exercise the same powers as those granted to statutory municipalities.[4] However, a home rule municipality has more power than a statutory municipality because it can look beyond the statutes and a few constitutional provisions to art. XX as a source of power. Still, the powers of home rule municipalities are limited by their charters, federal law, the state constitution, court decisions and, at times, legislation enacted by the General Assembly.

MATTERS OF "LOCAL AND MUNICIPAL," "STATEWIDE," AND "MIXED" CONCERN

Sec. 6 of art. XX provides:

> *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.*

This provision indicates that home rule municipalities are not limited to exercising only the specific powers mentioned in art. XX, but that they have every power essential or proper to the exercise of the right of self-government in local and municipal matters. Thus, the determination of whether a particular matter is one of "local and municipal" concern under art. XX is key to home rule authority.

In court cases challenging the authority of home rule municipalities to act, the courts have created three classifications:

- matters of local and municipal concern;
- matters of statewide concern; and
- matters of mixed statewide and local concern.[5]

Colorado courts have interpreted these classifications and home rule powers under art. XX as follows:

Matters of local and municipal concern. If a matter is of "local and municipal" concern and the home rule municipality has not adopted legislation (ordinances or charter provisions) regulating the matter, then state statutes apply within the home rule municipality.[6]

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1 C.R.S. § 31-2-201 et seq.

2 *Denver v. Miller,* 368 P.2d 982 (Colo. 1962); *McNichols v. Denver*, 230 P.2d 591 (Colo. 1950); *Cherry Creek Aviation, Inc. v. Steamboat Springs*, 958 P.2d 515, 519 (Colo. Ct. App. 1998).

3 Colo. Const. art. X, § 17 regarding the levy of income taxes; *Denver v. Sweet*, 329 P.2d 441 (1958); Colo. Const. art. XVII regarding the regulation of the manufacture, sale and distribution of intoxicating liquors; Colo. Const. art. XXV (regulatory powers over privately owned utilities); Colo. Const. art. X, § 20, (TABOR); Colo. Const. art. XVII, § 11 (term limits on elected officials).

4 *Leek v. Golden*, 870 P.2d 580 (Colo. Ct. App. 1993); C.R.S. § 31-1-102.

5 *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Denver v. Bd. of Cnty. Comm'rs, Grand* 782 P.2d 753 (Colo. 1989); *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988); *Denver v. Colorado River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985).

6 Colo. Const. art. XX, § 6; Vela v. People, 484 P.2d 1204 (Colo. 1971).

If a matter is of local and municipal concern and both the state and the municipality have legislation regulating it, the municipal ordinance or charter provision will supersede the state statute if, and only if, the statute actually conflicts with the ordinance or charter.[7]

Matters of statewide concern. If a matter is of "statewide" concern, a home rule municipality cannot adopt legislation regarding the matter except as specifically provided in the statute.[8] Language in some cases indicates that a home rule municipality has no power to adopt legislation relating to a subject of solely "statewide" concern.[9] However, there are also indications that a home rule municipality may adopt nonconflicting ordinances regulating even matters of statewide concern, at least if the state legislature specifically permits consistent local regulations.[10] In addition, it has been stated that, when the matter involves a specific constitutionally granted home rule power, and even though the matter may be of statewide concern, the legislature has no power to enact any law that denies a right specifically granted by the constitution.[11]

Matters of mixed statewide and local concern. On subjects of "mixed" statewide and local concern, the home rule municipality has the power to legislate if the charter or ordinance provision does not conflict with the state legislation or if the state has not pre-empted the field.[12]

In some recent decisions, courts have determined that a matter is at least of mixed state and local concern but have declined to determine whether the matter is of exclusive statewide concern.[13]

HOW TO DETERMINE WHETHER A MATTER IS OF LOCAL, STATEWIDE OR MIXED CONCERN

The Colorado Supreme Court, not the General Assembly, has the power to make the final decision of whether a matter is of local, statewide or mixed concern.[14] However, the Court makes the decision on a case-by-case basis, generally after extensive litigation. So how does a municipal official determine ahead of time whether a home rule municipality has the power to act? There are several sources and guidelines:

1. Art. XX sets forth specific areas of local and municipal concern.
2. Several court decisions have declared matters of local, statewide, or mixed concern.
3. The General Assembly has granted several powers to statutory municipalities, and a home rule municipality has at least as much power as a statutory municipality.[15] It is important to remember two issues when looking to state statutes for home rule municipality authority:
   a. The charter may limit what the state statute allows, in which case the charter controls;
   b. Because home rule powers derive from art. XX of the Colorado Constitution, the General Assembly has no power to limit local legislation by statute. The General Assembly may attempt to limit home rule powers by declaring legislation a matter of statewide concern. The court will consider such a declaration; however, the courts are not bound by the declaration. In fact, courts have declared several matters as local concern which the General Assembly had declared to be of statewide concern.[16]
4. Federal or state constitutional provisions may limit a home rule municipality's power to act in a specific area. For example, art. X sec. 17 of the Colorado Constitution adopted after art. XX has been construed to preempt home rule municipalities from levying an income tax.[17] Constitutionally imposed tax and spending limits and term limits on elected officials apply equally to home rule municipalities.[18]

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7 *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Denver v. Colorado River Water Conservation Dist*., 696 P.2d 730 (Colo. 1985); *Vela v. People*, 484 P.2d 1204 (Colo. 1971); *Winslow Const. Co. v. Denver,* 960 P.2d 685 (Colo. 1998); *Fraternal Order of Police v. Denver*, 926 P.2d 582 (Colo. 1996); Frisco v. Baum, 90 P.3d 845, 849 (Colo. 2004).

8 *Denver v. Colorado River Water Conservation Dist*., 696 P.2d 730 (Colo. 1985).

9 *See, e.g., Denver v. Tihen*, 235 P. 777 (Colo. 1925), overruled on other grounds by *State Farm Mut. Ins. Co. v. Temple*, 491 P.2d 1371, 1374 (1971).

10 *See, e.g., Pierce v. Denver*, 565 P.2d 1337 (Colo. 1977); *Conrad v. Thornton*, 553 P.2d 822 (Colo. 1976).

11 *Thornton v. Farmers Reservoir & Irrigation Co.*, 575 P.2d 382 (Colo. 1978) (the right of eminent domain); *Gosliner v. Denver Election Comm'n,* 552 P.2d 1010 (Colo. 1976) (elections).

12 *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988); *Vela v. People*, 484 P.2d 1204 (Colo. 1971); *DeLong v. Denver*, 576 P.2d 537 (Colo. 1978); *U.S. West Commc'ns, Inc. v. Longmont*, 948 P.2d 509 (Colo. 1997); *Voss v. Lundvall*, 830 P.2d 1061 (Colo. 1992); *R.E.N. v. Colorado Springs*, 823 P.2d 1359 (Colo. 1992).

13 *See, e.g., Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988).

14 "While the statutory declaration is relevant, it is not binding. If the constitutional provisions establishing the right of home rule municipalities to legislate as to their local affairs are to have any meaning, we must look beyond the mere declaration of a state interest and determine whether in fact the interest is present." *Denver v. State*, 788 P.2d at 768 n.6; *Denver v. Sweet*, 329 P.2d 441 (Colo. 1958); *Winslow Const. Co. v. Denver*, 960 P.2d 685 (Colo. 1998).

15 *Woolverton v. Denver*, 361 P.2d 982 (1961) (overruled on other grounds by *Vela v. People*, 484 P.2d 1204 (Colo. 1971)); *Leek v. Golden*, 870 P.2d 580 (Colo. Ct. App. 1993).

16 *See Denver v. State*, 788 P.2d 764 (Colo. 1990) (employee residency requirements).

17 *Denver v. Sweet*, 329 P.2d 441 (Colo. 1958).

18 Colo. Const. art. X, § 20 (TABOR); Colo. Const. art. XVIII, § 11 (term limits on elected officials).

5. If the issue is a felony under state law, it likely will be considered a matter of statewide concern.[19]
6. In *City and County of Denver v. State of Colorado* (the case deciding that the General Assembly could not pre-empt local employee residency requirements), the Colorado Supreme Court set forth the factors it considers in determining whether a matter is of local, statewide or mixed concern. The court emphasized that they had not developed a specific test to be applied in every instance, but it would apply several factors on a case by case basis to consider the "totality of the circumstances." The court stated that it balances the relative interests of the state and the home rule municipality, recognizing that every issue will include interests of each.[20]

The court considers:

- the need for statewide uniformity of regulation;[21]
- the impact of municipal regulation on persons living outside the municipality;[22]
- the historical considerations, i.e., whether a particular matter is traditionally governed by state or local government;[23]
- the necessity of cooperation among government units and local interests;[24] and
- whether the Colorado Constitution commits a matter to state or local regulation.[25]

Since the landmark decision in *Denver v. State*, the appellate courts in Colorado have more or less systematically applied the five factors enumerated in that case to determine whether other matters should be considered of local or statewide concern.[26]

In *Commerce City v. State*, the Colorado Supreme Court has added additional factors to the *Denver v. State* test to determine whether an issue is of local, state or mixed concern. First, the court embellished the "need for uniformity" consideration by introducing the subjective criterion of the "basic expectations" of citizens.[27] In sum, if citizens are presumed by the court to "expect" uniformity in regulation from jurisdiction to jurisdiction, then the state legislature is justified in providing them with such uniformity through state mandates on municipalities. Second, the court stated that "advances in technology ... increase the need for uniformity."[28]

In *Telluride v. Lot Thirty-Four Venture, L.L.C.,* the court stated that whether a particular subject matter is one of state, local, or mixed concern is a legal issue, requiring a court to consider the totality of the circumstances in making its conclusion.[29]

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19 *Aurora v. Martin*, 507 P.2d 868 (Colo. 1973); *Quintana v. Edgewater Municipal Ct.*, 498 P.2d 931 (1972).

20 *Denver v. State*, 788 P.2d 764 (Colo. 1990). *See also Denver v. Bd. of Cnty. Comm'rs, Grand*, 782 P.2d 753 (Colo. 1989) (comparing interest of Denver in construction of water projects outside its boundaries with the interest of the state and of the counties in which the water projects are located). *See, e.g., Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988) (comparing city's interest in controlling outdoor advertising signs within its municipal borders, i.e., safety, recreation, aesthetics, with state's interest in continued eligibility for federal highway funds threatened by inconsistent local regulations); *Denver & Rio Grande W.R.R. v. Denver*, 673 P.2d 354 (Colo. 1983) (comparing city's interest in construction of certain viaducts with the "paramount" interest of those living outside of Denver and holds that the construction of the viaducts was of mixed concern); *Craig v. Pub. Util. Comm'n*, 656 P.2d 1313 (Colo. 1983) (finding that although city has interest in safety of railroad crossings, state's interest is predominant); *Commerce City v. State*, 40 P.3d 1273, 1279-80 (Colo. 2002) (finding that photo radar traffic regulations are of mixed concern).

21 *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988) (holding uniform regulation of highway advertising signs necessary to preclude potential loss of federal revenue); *Benion v. Denver*, 504 P.2d 350 (Colo. 1972) (finding that state residents have an expectation of uniformity in local criminal laws); *Denver v. State*, 788 P.2d at 769, citing with approval *State ex rel. Hernig v. Milwaukee*, 373 P.2d 680 (1962) overruled on other grounds ("In the appropriate case the need for uniformity in the operation of the law may be a sufficient basis for legislative preemption. But uniformity in itself is no virtue, and a municipality is entitled to shape its local law as it sees fit if there is no discernible pervading state interest involved.").

22 *See Denver & Rio Grande W.R.R. v. Denver*, 673 P.2d 354 (Colo. 1983) (finding Denver's decision to construct viaduct had important impact on people residing beyond the municipal limits). *See also Klemme, The Powers of Home Rule Cities in Colorado*, 36 U. Colo. L. Rev. 321, 342 (1964) (finding that "statewide concern" means those things that are of significant interest to people living outside the home rule municipality).

23 Also relevant to this determination are historical considerations, i.e., whether a particular matter is one traditionally governed by state or by local government. *See Denver v. State*, 788 P.2d 764, 771 (Colo. 1990).

24 Further, "where not only uniformity is necessary, but cooperation among governmental units, as well, and where action of state and county officials within the limits of the city is imperative to effectuate adequate protection outside the city, the matter will in all likelihood be considered a state concern." *Denver v. State*, 788 P.2d 764, 768; *Commerce City v. State*, 40 P.3d at 1280; *Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000).

25 "Although we agree with the state that the enumeration in Section 6 of matters subject to regulation by home rule municipalities is not dispositive, we also agree with the cities that it is significant. If the state is unable to demonstrate a sufficiently weighty state interest in superseding local regulation of such areas, then pursuant to the command of Section 6, statutes in conflict with such local ordinances or charter provisions are superseded." *Denver v. State*, 788 P.2d 764, 771 (Colo. 1990).

26 For the most thorough application of the *Denver v. State* criteria in other contexts, *see Voss v. Lundvall*, 830 P.2d 1061 (Colo. 1992); *Fraternal Order of Police v. Denver,* 926 P.2d 582 (Colo. 1996); *Winslow Constr. Co. v. Denver*, 960 P.2d 685 (Colo. 1998).

27 *Commerce City v. State*, 40 P.3d 1273, 1281 (Colo. 2002).

28 *Denver v. Qwest Corp.*, 18 P.3d 748, 755 (Colo. 2001).

29 *Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000).

LOCAL REGULATION IN AREAS OF STATEWIDE OR MIXED CONCERN

STATEWIDE CONCERN

The fact that a subject has been declared to be of statewide concern does not necessarily mean that a home rule municipality cannot legislate on the subject. The state legislation may specifically leave room for local legislation.

There must be a conflict between the state statute and the ordinance for pre-emption of the local ordinance to occur.[30] The test to determine whether a conflict exists is whether the ordinance authorizes what the statute forbids, or forbids what the statute expressly has authorized.[31] There is no conflict to the extent the municipal ordinance is merely more restrictive than the state statute.[32]

MIXED CONCERN

In matters of mixed concern, the charter or ordinance of a home rule municipality can coexist with the statute so long as the local ordinance and the state statute do not conflict. In the event of a conflict, the conflicting portion of the charter or ordinance is superseded by the statute.[33] In an area of mixed concern, the Colorado Supreme Court has held that any state preemption must derive from a state statute, and not some other type of state action such as a P.U.C. tariff.[34]

If the home rule municipality decides, on some basis, that it does have the power to legislate on a particular subject, it must still look to its charter for any limitations on the municipality's power to act in the area. If the charter contains a limitation, the municipality must act in accordance with the charter limitation, or its action may be invalid.

ADVANTAGES AND DISADVANTAGES OF HOME RULE

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

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

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

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

- within certain limits, create new tax sources to meet local financial needs;[35]
- provide a method for the simple and expeditious transfer of funds among municipal departments;[36]
- establish its own maximum debt limitations or have no maximum limitation, as it desires;[37]

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30 *Vela v. People*, 484 P.2d 1204 (1971); *DeLong v. Denver*, 576 P.2d 537 (Colo. 1978); *Leek v. Golden*, 870 P.2d 580, 584 (Colo. Ct. App. 1993).

31 *Aurora v. Martin*, 507 P.2d 868 (Colo. 1973); *R.E.N. v. Colorado Springs*, 823 P.2d 1359, 1362 (Colo. 1992).

32 *Denver v. Howard*, 622 P.2d 568 (Colo. 1981); *Vela v. People*, 484 P.2d 1204 (Colo. 1971); *Ray v. Denver*, 121 P.2d 886 (Colo. 1942).

33 *Denver v. State*, 788 P.2d 764, 767 (Colo. 1990); *Nat'l Adver. Co. v. Dept. of Highways*, 751 P.2d 632 (Colo. 1988); *Denver v. Colorado River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985); *Voss v. Lundvall*, 830 P.2d 1061 (Colo. 1992).

34 *U.S. West Commc'ns, Inc. v. Longmont*, 948 P.2d 509 (Colo. 1997).

35 *Winslow Constr. Co. v. Denver*, 960 P.2d 685, 692 (Colo. 1998); *Deluxe Theatres, Inc. v. Englewood*, 596 P.2d 771 (Colo. 1979); *Sec. Life & Accident Co. v. Temple*, 492 P.2d 63 (Colo. 1972); *Farmers Mutual Auto Ins. Co. v. Temple*, 491 P.2d 1371 (Colo. 1971); *Denver v. Duffy Storage & Moving Co.*, 450 P.2d 339 (Colo. 1969); *Berman v. Denver*, 400 P.2d 434 (Colo. 1965); *Englewood v. Wright*, 364 P.2d 569 (Colo. 1961).

36 *Denver v. Blue*, 500 P.2d 970 (1961).

37 Colo. Const. art. II, § 6(2). Note that the Constitution arguably requires a charter provision because it does not include the customary language, "or an ordinance adopted pursuant to the charter."

- establish its own time limitations for the repayment of municipal bonds;[38]
- create its own governmental form and administrative structure, including such matters as the size of its governing body; the powers of elected and appointed officials; terms of office of the members of its governing body and whether they are elected from districts or at-large; quorum and voting requirements; the manner of filling vacancies; and the allocation of powers among elected and appointed officials, boards and commissions, and staff;[39]
- establish its own procedures for providing street, sidewalk, and other special improvements;[40]
- establish procedures and dates for municipal elections differing from those established by the statutes, including such matters as regular and special election dates, the dates when elected officials will take office, the creation of an election commission, the procedure for conducting elections, and who may vote in municipal elections;[41]
- establish procedures by which ordinances and resolutions may be adopted, including methods of adopting codes by reference; determining whether actions will be taken by ordinance, resolution, or motion; procedures for notice, hearing, publication, or posting with regard to ordinances; and determination of the effective date of ordinances;[42]
- establish procedures and requirements that pertain to regular and special meetings and executive sessions;[43]
- establish, within certain bounds, municipal court procedures;[44]
- establish, within limits, greater penalties and jail sentences for ordinance violations than those provided for by statute;[45]
- establish procedures for the sale or disposal of public property and the awarding of contracts;[46]
- have available broader powers of eminent domain outside municipal boundaries;[47]
- have available broader and more flexible taxing powers that include the ability to collect, administer, and enforce sales and use taxes and to determine what transactions are subject to or exempt from sales and use taxes; the ability to establish procedures for the adoption, amendment, increase or decrease of taxes; the authority to levy taxes not available to statutory municipalities, such as lodgers taxes, admissions taxes, real estate transfer taxes, and other excise taxes; and the ability to provide property tax increase limits different from those provided for in the statutes;[48]
- have available broader and more flexible land use, zoning, and planning powers;[49] and
- have greater authority over the qualifications of municipal officers and employees.[50]

As the foregoing list illustrates, the limits of home rule power have not been rigidly established. A municipality's power to act may depend in part on how the subject of legislation is classified, i.e., of local and municipal, statewide, or mixed concern. Depending upon the particular viewpoint, this lack of definite limits on home rule power may constitute either an advantage or disadvantage of home rule. It may be a disadvantage in the sense that it creates some legal uncertainty when a home rule municipality legislates in a relatively new area. However, it also may be termed an advantage of home rule since the lack of rigid legal boundaries allows home rule municipalities to maintain flexibility when attempting to find new solutions to local problems.

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38 *Davis v. Pueblo*, 406 P.2d 671 (Colo. 1965).

39 Colo. Const. art. XX, § 6; *Evert v. Quren*, 549 P.2d 791 (Colo. Ct. App. 1976); C.R.S. § 31-1-102(2).

40 Colo. Const. art. XX, § 6; *Bd. of County Comm'rs, El Paso v. Colorado Springs*, 180 P. 301 (Colo. 1919).

41 *Kingsley v. Denver*, 247 P.2d 805 (Colo. 1952); *Cook v. Delta*, 64 P.2d 1257 (Colo. 1937); *Clough v. Colorado Springs*, 197 P. 896 (1921); *Englewood Police Benefit Ass'n. v. Englewood*, 811 P.2d 464 (Colo. Ct. App. 1990), cert. denied; *May v. Mountain Village*, 969 P.2d 790 (Colo. Ct. App. 1997).

42 *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976); *Artes-Roy v. Aspen*, 856 P.2d 823 (Colo. Ct. App. 1993).

43 *Gosliner v. Denver Election Comm'n*, 552 P.2d 1010 (Colo. 1976); *Glenwood Post v. Glenwood Springs*, 731 P.2d 761 (Colo. Ct. App. 1986).

44 C.R.S. § 13-10-103 et seq.; *Artes-Roy v. Aspen*, 856 P.2d 823 (Colo. Ct. App. 1993).

45 *Aurora v. Martin*, 507 P.2d 671 (Colo. 1965).

46 Colo. Const. art. XX, § 6.

47 *Thornton v. Farmers Reservoir & Irrigation Co.*, 575 P.2d 382 (1978); *Denver v. Bd. of Cnty. Commn'rs, Arapahoe*, 156 P.2d 101 (1945); *Parker v. Norton*, 939 P.2d 535 (Colo. Ct. App. 1997).

48 *See Berman v. Denver*, 400 P.2d 434 (Colo. 1965); *Sec. Life & Accident Co. v. Temple*, 492 P.2d 63, (Colo. 1965); *Winslow Constr. Co. v. Denver*, 960 P.2d 685 (Colo. 1998); *Denver v. Duffy Storage & Moving Co.*, 450 P.2d 339 (Colo. 1969); *State Farm Mutual v. Temple*, 491 P.2d 1371 (Colo. 1971); *Deluxe Theatres, Inc. v. Englewood*, 596 P.2d 771 (Colo. 1979); *Boulder v. Regents of the Univ. of Colorado*, 501 P.2d 123 (Colo. 1972); *Bd. of Cnty. Commn'rs, El Paso v. Colorado Springs*, 180 P. 301 (Colo. 1919).

49 *See Colorado Springs v. Securcare Self Storage,* 10 P.3d 1244 (Colo. 2000); *Zavala v. Denver,* 759 P.2d 664 (Colo. 1988); *VFW v. Steamboat Springs*, 575 P.2d 835 (Colo. 1978); *Sellon v. Manitou Springs*, 745 P.2d 229 (Colo. 1978); *Greeley v. Ellis*, 527 P.2d 538, (Colo. 1974); *Colorado Springs v. Smartt*, 620 P.2d 1060 (Colo. 1980); *Roosevelt v. Englewood*, 492 P.2d 65 (Colo. 1971); *Averch v. Denver*, 242 P. 47 (Colo. 1925); *Moore v. Boulder*, 484 P.2d 134 (Colo. Ct. App. 1971).

50 Colo. Const. art. XX, § 6(a); *Denver v. State*, 788 P.2d 764 (Colo. 1990); *Fraternal Order of Police v. Denver*, 926 P.2d 582 (Colo. 1996).

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

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

One of the threshold problems faced by those municipalities considering the adoption of home rule is its cost. The Municipal Home Rule Act provides that the costs incurred in the process of adopting a home rule charter are to be paid by the municipality. Those costs may vary and may include special attorney fees and other special consultant fees, expenses incurred in publishing notices of elections and publishing the final charter, secretarial services, general supplies for the charter commission, and the expenses of holding special elections. Other than special consultant fees, the highest costs to the municipality may be publication costs and the costs of holding special elections.

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

CHAPTER EIGHT: QUICK CONCEPTS

AGENDA

A written list of topics for discussion and/or action at a meeting of the governing body (or other board or authority). A sample meeting agenda is provied in the appendix.

ANNEXATION

Annexation is the legal method of expanding the municipal boundaries, making the incorporated municipal land area larger.

Title 31, art. 12, which applies to home rule and statutory municipalities, governs annexation. Additionally, the Colorado Constitution at art. II, sec. 30 (and, for Denver only, Colorado Constitution, art. XX, sec.1) governs annexation. These statutes establish the basic requirements and procedures to be followed to annex property to a municipality. Because of the complexity and lack of clarity in the annexation statutes, the clerk should work closely with the municipal attorney during any annexation proceeding. Special notice, hearing, and filing requirements apply to annexation proceedings.[1]

For further information concerning annexation, see CML's *Annexation in Colorado* (2003).

AUDIT

The examination of the financial affairs of the municipality by an independent firm or outside agency.[2]

BALANCE SHEET

A statement of the assets, liabilities, and capital of the municipality at a particular point in time, detailing the balance of income and expenditure over the preceding period

BEER AND LIQUOR LICENSING

Beer and liquor licensing is governed generally by the Colorado Liquor Code,[3] the Colorado Beer Code,[4] and by regulations under both codes. The beer code applies to 3.2 beer only.[5] Beer with a higher percentage of alcohol, as well as vinous and spirituous liquors, are regulated under the liquor code.[6] Both the Colorado Liquor Code and the Colorado Beer Code have been held to be of statewide concern, and neither statutory nor home rule municipalities may enact local ordinances or regulations which conflict with these statutes.

The codes provide for both state and local licensing, but local licensing is for retail sale only. State licensing is through the Colorado Department of Revenue Liquor Enforcement Division. In municipalities, the licensing authority may be the governing body or it may be a separate body designated by charter or ordinance.[7] Local licensing authorities must apply statutory criteria in granting or denying licenses, but the criteria give the local authority considerable discretion in practice. Municipalities may impose business or occupation taxes/fees on retail beer or liquor outlets (see "Revenue sources" in Chapter 8).

The liquor code permits a local option election to prohibit or further restrict retail sales.[8] There is no similar provision in the beer code.

The licensing procedure requires that an application (on forms prescribed by the state) be filed with the local authority.[9] The application must be accompanied by two distinctly different kinds of fees: "license fees" and "application fees." The local authority may set its own application fee pursuant to C.R.S. § 12-47-135(2), imposing up to a $500 fee for a new license, transfer of ownership, or location or for a delinquent renewal. There are statutory restrictions as to the

1 C.R.S. §§ 31-12-108 to 31-12-110, § 31-12-113.

2 *See* The Local Government Audit Law, C.R.S. §§ 29-1-601 to 29-1-608.

3 Art. 47 of title 12.

4 Art. 46 of title 12.

5 C.R.S. § 12-46-103(1).

6 C.R.S. § 12-47-103(2).

7 C.R.S. § 12-46-103(4) and § 12-47-103(17).

8 C.R.S. § 12-47-105.

9 C.R.S. § 12-47-309(2).

circumstances under which license applications may be received and acted upon.[10] For example, an application may not be received or acted upon where the proposed location is in an area where the sale of liquor is not permitted by the particular zoning ordinance.

The term of beer and liquor licenses is one year.[11] Renewal procedures are set forth at C.R.S. § 12-47-302.

Procedures for granting temporary permits to transferees of existing licenses, pending approval of the transfer of ownership, are specified in C.R.S. § 12-47-303. Fees are specified in C.R.S. § 12-47-501 and the following sections, with local fees specifically discussed at C.R.S. § 12-47-505. Procedures for suspending or revoking licenses are set forth at C.R.S. § 12-47-601, and the grounds for revoking temporary permits are stated in C.R.S. §§ 12-47-901 to 12-47-907.

Finally, the Special Event Permit Code, at art. 48 of title 12, governs the issuance of permits for the sale, by the drink only, of alcoholic beverages for functions held by nonprofit organizations and political candidates. C.R.S. § 12-48-107 details the process for special event permits. A local licensing authority may elect not to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is required only to report to the Liquor Enforcement Division, within 10 days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service. A local licensing authority electing not to notify the state licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.

For more information on beer and liquor licensing, clerks should refer to CML's *Liquor and Beer Licensing Law and Practice* (2006).

BUDGET

An annual blueprint for the municipality's revenue and expenditures. It will include last year's numbers as well as anticipated figures for the coming year.[12]

BUSINESS LICENSES

(see also "Licences and franchises")

C.R.S. § 31-15-501(1)(c) grants municipal governing bodies the general power to "license, regulate, and tax, subject to any law of this state, any lawful occupation, business place, amusement, or place of amusements and to fix the amount, terms, and manner of issuing and revoking licenses issued therefor." These provisions also contain a number of other, more specific regulatory grants; see "Revenue sources" in Chapter 8 regarding business and occupation taxes. Home rule municipalities are restricted in their power to impose licensing requirements by charter provisions, federal and state constitutional provisions, and pre-empting state legislation.

Typical subjects of C.R.S. § 31-15-501(1)(c) licensing requirements include retail businesses in general, or particular businesses, occupations, or events such as contractors, pawnbrokers, auctioneers, parades, and circuses. Generally, the goal of licensing requirements may be either to regulate the business or to raise revenue, or both; but in some cases only revenue-raising measures are permissible.

Pre-emption by state law is a legal issue that sometimes arises in connection with municipal licensing requirements. Where the state has adopted a comprehensive regulatory scheme, municipalities (including home rule municipalities) may be precluded from imposing additional licensing requirements, at least those regulatory in nature. Municipal requirements aimed solely at raising revenue may sometimes coexist with pre-empting state legislation.

Municipalities frequently have ordinances requiring licenses for transient merchants or peddlers, often referred to as "Green River" ordinances. These ordinances may be affected by state and federal constitutional guarantees of freedom of speech or religion if they are being applied against door-to-door political canvassers, or solicitors for charitable or religious causes. Similar problems may be encountered where licensing conflicts with rights of free speech, for example, the licensing of handbill distributors or newspaper stands.

CAFR

Comprehensive Annual Financial Report

CASB

Colorado Association of School Boards (*www.casb.org*)

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10 C.R.S. §§ 12-47-304(3) to 12-47-313.

11 C.R.S. § 12-47-310(l)(a).

12 *See* The Local Government Budget Law, C.R.S. §§ 29-1-101 to 29-1-115.

CCI

Colorado Counties Inc. (*www.cci.org)*

CFR

Code of Federal Regulations

CGFOA

Colorado Government Finance Officers Association (*www.cgfoa.org*)
CGFOA is a 501(c)6 nonprofit organization that strives to improve the practice of government finance in Colorado by promoting ethical, high quality governmental service and facilitating education and information sharing.

CHARTER

A document required by home rule cities/towns that defines the powers and responsibilities of the local government. A charter must be approved through an election by a majority vote of the citizens.

CIRSA

Colorado Intergovernmental Risk Sharing Agency (*www.cirsa.org*)
CIRSA's work is threefold: to ensure public entity members can obtain affordable insurance coverage, receive great service, and continually improve their operations to minimize risks and exposures.

CITY

Traditionally a municipal corporation having a population of more than 2,000. C.R.S. § 31-1-101(2).

CMCA

Colorado Municipal Clerks' Association (*www.cmca.gen.co.us*)

CML

Colorado Municipal League (*www.cml.org*)
CML is a nonprofit, nonpartisan organization established in 1923, represents approximately 99 percent of the municipal population in the state, and is widely recognized as the official voice of municipal government in Colorado. CML's daily operations revolve around three areas of service to members: advocacy, information, and training.

CODE OF ETHICS

The Code of Ethics identifies several rules of conduct for local government officials and employees. C.R.S. § 24-18-101 et seq. and § 24-18-201 et seq.

CODIFICATION

A process of organizing and arranging all legislation of a general and permanent nature into a municipal code.

COLORADO GOVERNMENTAL IMMUNITY ACT

The Colorado Governmental Immunity Act establishes general immunity from lawsuit to public entities and employees in tort cases. C.R.S. §§ 24-10-101 to 24-10-120.

COLORADO REVISED STATUTES

C.R.S., the listing of all statutes (laws) applicable to Colorado.

CONTRACTS

Municipalities are granted the general power to enter into contracts as noted at C.R.S. § 31-15-101(1)(c). Home rule municipalities may enter into contracts for any public purpose unless restricted by a constitutional provision, charter provision, superseding state statute, or ordinance. A municipal governing body, in the exercise of its legislative power, cannot enter into a contract which will bind succeeding governing bodies, thereby depriving them of the unrestricted exercise of their legislative power.

Municipal contracts are among the public records that the clerk generally is charged with preserving. Also, even contracts that contain a confidentiality clause may be subject to public inspection under the Open Records Act. In statutory cities under 10,000 in population, a statement concerning all "contracts awarded" must be published in the same manner as proceedings for the payment of bills.[13] C.R.S. § 29-1-205 requires informational filings with the Division of Local Government of all contracts between political subdivisions.

COORDINATED ELECTION

An election wherein the municipality holds an election concurrent with and coordinated with the County election.

CORA / COML

Colorado Open Records Act/Colorado Open Meetings Law, also referred to as "sunshine laws." C.R.S. §§ 24-72-201 to 24-72-206. For more information, see CML's *Open Meetings, Open Records: Colorado's Sunshine Laws and Municipal Government* (2008).

COUNCIL-MANAGER FORM OF GOVERNMENT

The elected governing body is responsible for the legislative functions of the municipality and the town/city manager provides professional management to the councilmembers/trustees.

DE-BRUCE

(See also "TABOR")

By election, opt out of TABOR revenut and spending limits. See also CML's *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

DEO

Designated election official

DIRT DISTRICT

Bond issue to build infrastructure prior to development

DOLA

Department of Local Affairs (*www.colorado.gov/dola*)

EMINENT DOMAIN

Eminent domain, or condemnation, is the taking of private property for public purposes. Both the federal and state constitutions require "just compensation" when property is condemned.[14] Article XX, §1 of the Colorado Constitution specifically grants broad powers of eminent domain to home rule municipalities, both within and outside their boundaries.

Basic statutory eminent domain procedures are set forth at C.R.S. §§ 38-6-101 to 38-6-122. Part 2, provides a separate procedure for condemnation of water rights.[15] Extraterritorial condemnation by a town is prohibited under Part 1 unless otherwise specifically authorized by law.[16] Such "specific authorization" does exist for towns (and cities) for the purpose of constructing sewer lines, disposal works, electric lines, and related facilities as set forth in C.R.S. § 38-6-122. In addition, cities may condemn property outside their corporate limits for "boulevard, parkway, or park purposes" as provided in C.R.S. § 38-6-110, subject to the five-mile limitation imposed by C.R.S. § 31-25-201(1). C.R.S. § 38-6-101 provides that where special benefits are not to be assessed,[17] the procedures of C.R.S. §§ 38-1-101 to 38-1-122 may be used as an alternative to the art. 6, part 1 procedures. Municipalities owning electric power producing or distributing facilities also are authorized to exercise eminent domain power for utility lines along "any public highway" under art. 5 of title 38. Municipalities also may acquire rights-of-way for the purpose of conveying water under the Colorado Constitution, art. XVI, sec. 7.

13 C.R.S. § 31-20-202.

14 U.S. Const. amend. V; Colo. Const. art. 2, § 15.

15 C.R.S. § 38-6-201 et seq.

16 C.R.S. § 38-6-101.

17 *See* C.R.S. § 38-6-107.

ENTERPRISE FUND

A governmental accounting fund in which the services provided are financed and operated similarly to those of a private business. The rate schedules for these services are established to insure that revenues are adequate to meet all necessary expenditures. Examples of enterprise funds are water, wastewater and stormwater operations; these funds are intended to be self-supporting.

EXECUTIVE SESSION

A segment of a meeting of the governing body, closed to the public, to discuss specific topics prescribed by statute, C.R.S. § 24-6-402.

FAIR CAMPAIGN PRACTICES ACT (FCPA)

A set of federal rules governing contributions to political campaigns and reporting of same.[18]

NAGARA

National Association of Government Archives and Records Administrators (*www.nagara.org*)

FORMS OF GOVERNMENT

The forms of government for statutory and charter municipalities are prescribed by statute. Municipalities choosing to organize or reorganize as home-rulemunicipalities under art. XX of the Colorado Constiution may choose the form of government that most suits their needs.[19]

FRANCHISE

A franchise is a special right granted by a municipality to a private company or other private entity to use public streets, alleys, or other public right-of-ways.[20] Historically, franchises most commonly were granted to public utilities such as electric and gas utilities and transportation systems. More recently, franchises for cable television have become commonplace in Colorado.

Procedural requirements for granting franchises by statutory cities and towns are set forth at C.R.S. §§ 31-32-101 to 31-32-105. Three weekly publications must be made prior to the formal application for the franchise, which must be made at a regular meeting of the governing body. Adoption of an ordinance, with a two-reading procedure, is required to grant a franchise. The first publication must be at least two weeks prior to final passage. A majority vote of all members of the governing body is required.

Additional substantive limitations on certain railroad and utility franchises are contained in C.R.S. § 31-15-706 and § 31-15-707. These limitations include required consent of property owners, a 25-year limit, and a requirement that the municipality retain the right to purchase the facilities.

Home rule municipalities are no longer required to grant a franchise by election because of a 1986 constitutional amendment. Presumably, home rule cities may grant franchises by ordinance or resolution. A home rule charter provision still may require an election. In the event the home rule charter does not require an election, it may require a lesser number of registered electors to order a referendum on the ordinance than the five percent figure provided by the 1986 amendment. Finally, the ordinance granting a franchise in a home rule city, even if it contains an emergency clause, is still subject to referendum.

Art. II, sec. 11 of the Colorado Constitution prohibits grants of irrevocable franchises by the General Assembly. This has been held applicable to municipalities. Some legal observers think that express statutory authority is required for the grant of an exclusive franchise, at least by a statutory municipality. Colorado statutes do not expressly authorize exclusive franchise grants.

Where the state grants statewide operating rights to a company, the franchise powers of both statutory and home rule municipalities may be pre-empted (see “Revenue sources” in Chapter 8). Municipal franchise requirements should probably not be inconsistent with ratemaking or other regulatory action by the state Public Utilities Commission.

18 C.R.S. § 1-45-117.

19 Chapter 7 of this handbook describes home rule in more detail.

20 C.R.S. §§ 31-32-101 to 31-32-105.

FUND ACCOUNTING

A system of accounting used primarily by non-profit or government organizations emphasizing accountability rather than profitability. Unlike corporations, it is more important for public entities and nonprofit organizations to keep a record of how money was spent, rather than how it was earned. Fund accounting segregates resources into funds to identify both the source and use of the funds, so accounting records take the form of a collection of funds with each fund having a distinct purpose ranging from operating expenses to funding the various activities of the organization.

GAAP

Generally accepted accounting principles

GASB

Governmental Accounting Standards Board

GOVERNING BODY

In the case of Colorado muncipalities, the city council or town board of trustees.

HOME RULE MUNICIPALITY

Governed by a charter enacted by the municipality. C.R.S. §§ 31-2-201 to 31-2-225. See also CML's *Home Rule Handbook* (1999), *Overview of Municipal Home Rule* (2006), *A History of Home Rule* (2009), and *Matrix of Colorado Home Rule Charters* (2008).

HUTF

Highway Users Tax Fund

IGA

An intergovernmental agreement (IGA) is when municipal governments contract with other governmental entities to provide services. C.R.S. § 29-1-201 et seq; Colo. Const. art. XIV, sec. 18.

IIMC

International Institute of Municipal Clerks (*www.iimc.com*)

INCOME STATEMENT

A document generated monthly and/or annually that reports the earnings of the municipality by stating all relevant income and all expenses that have been incurred to generate that income.

INITIATIVE

The citizen initiative process is the direct power of the voters to propose a new legislative measure or course of action, in the form of an ordinance orresolution, and secure its submission to the council/board or the electorate for approval.[21]

LAND USE REGULATION

Land use regulation is perhaps the most important exercise of municipal police power. Police power is the extremely broad and sometimes vague general power to protect public health, safety, and welfare.[22] Because police power regulation and restrictions on land use have major economic and political consequences, many municipal governing bodies devote substantial time and effort to the establishment and implementation of land use regulatory policies.

Basic statutes governing municipal land use regulation are contained in art. 23 of title 31. Part 2 deals with the planning commission and its adoption of a master plan and subdivision regulations. Part 3 deals with zoning, including the roles of the zoning commission and the board of adjustment. Powers under these two parts are independent, meaning that the creation of a planning commission is not necessarily required to exercise the zoning power; however, most municipalities do begin by creating a planning commission. Once a planning commission is created, it becomes the zoning commission for purposes of part 3.[23] Some land use regulations of particular interest to clerks are:

21 *See* Colo. Const. art. V, § 1.

22 C.R.S. § 31-15-103 and § 31-15-401.

23 C.R.S. § 31-23-306.

- C.R.S. § 31-23-203 sets forth requirements for the size and membership of the planning commission and permits all municipalities to vary its provisions by ordinance. Provisions requiring planning commission members to be residents of the municipality and prohibiting compensation of planning commission members cannot be varied by ordinance.
- C.R.S. § 31-23-208 describes the notice and hearing requirements for the adoption of a master plan by a planning commission.
- C.R.S. § 31-23-214 states the notice and hearing requirements for adoption of subdivision regulations by a planning commission. This provision also discusses the required submission of evidence by a subdivider regarding adequate utility procurement.
- C.R.S. § 31-23-215 contains the notice and hearing requirements for planning commission review of particular subdivision plats.
- C.R.S. § 31-23-220, § 31-23-221, and § 31-23-222 state notice and hearing requirements and other procedural requirements for approval of plats making reservations for future acquisition of streets.
- C.R.S. §§ 31-23-304 and 31-23-305 provide the notice and hearing requirements for adopting and changing zoning provisions.

Whether the legislature intended these land use statutes to apply to home rule municipalities is not entirely clear.[24] However, the Colorado Supreme Court has held that land use is a matter of local concern. Consequently, home rule municipalities may supersede these statutes by charter provision or by ordinance. In practice, land use regulation procedures in many home rule municipalities follow the statutory pattern. Note that although land use control may be a local concern, other state statutes may pre-empt municipal land use regulation in specific instances. For example, statutes may pre-empt home rule authority in regards to certain forms of housing that the General Assembly declares to be of statewide concern.[25]

Other land use statutes include the Local Government Land Use Control Enabling Act (C.R.S. §§ 29-20-101 to 29-20-108); the Planned Unit Development Act (C.R.S. §§ 24-67-101 to 24-67-108); the Urban and Rural Enterprise Zone Act (C.R.S. §§ 39-30-101 to 39-30-108), and the Areas and Activities of State Interest Act (C.R.S. §§ 24-65.1-101 to 24-65.1-502).

LEGAL PUBLICATION

Publication of notices in a designated newspaper of record or by other electronic means to comply with legal requirements for a public notice.

LESSONS ON LOCAL GOVERNMENT

Lessons On Local Government (*www.lessonsonlocalgovernment.com*) provides municipal officials with resources for connecting with youth in their communities. It is also a curriculum resource on local government for K-12 teachers.

LETTER OF AGREEMENT

A document that states what has been agreed between organizations or between people.

LICENSES AND FRANCHISES

(see also "Beer and liquor licenses;" "Business licenses;" "Other types of licensing")

Licenses and franchises are part of a broad sphere of municipal regulatory activities that involve paperwork, publications, and hearings that are often the municipal clerk's responsibility. Additionally, C.R.S. § 31-4-215(1) provides that the duties of the clerk in a council–manager city include issuing licenses and collecting license fees.

LISTSERV

Listservs are a resource provided by CML to facilitate communication and email exchange between municipal staff across Colorado. Listservs have been set up for use specifically by municipal clerks, attorneys, finance officers, human resource personnel, managers/administrators, public information officersm and public works directors; sign up at *www.cml.org/clerk.aspx*.

MAYOR-COUNCIL FORM OF GOVERNMENT

The mayor is elected by the voters; the mayor is considered either a "weak mayor" or "strong mayor" based on the powers of the office.

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24 C.R.S. § 31-23-226.

25 *See generally* C.R.S. § 31-23-301 and § 31-23-303.

MILL LEVY

The tax rate that is applied to the assessed value of a property. One mill is $1 per $1,000 of assessed value.

MINUTES

A recorded and/or written record of a meeting. Sample meeting minutes are provided in the appendix.

MOTION

The means by which business is brought before the assembly.

MOU

Memorandum of understanding (a contract).

MUNICIPAL CODE

The codified ordinances that are enacted and enforced by a municipality.

MUNICIPAL ELECTION

An election held within the municipality for the purposes of electing local members of the governing body and deciding other ballot issues. Title 31, art. 10.

NAGARA

National Association of Government Archives and Records Administrators (*www.nagara.org*)

NLC

National League of Cities (*www.nlc.org*)

ORDINANCE

A document passed by the governing body to enact law prescribing a general rule of conduct which citizens are expected to follow.

OTHER TYPES OF LICENSING

Apart from the statutory authority to license businesses and occupations discussed under the "Licenses and franchises" heading above, the general police power granted to municipalities by C.R.S. §§ 31-15-103 and 31-15-401 allows them to license other activities where control is necessary to protect the public health, safety, and welfare. Licensing of dogs, bicycles, and fireworks are examples of this type of licensing, with C.R.S. § 31-15-601 specifically authorizing licensing of building permits.

PERSON IN INTEREST

The person who is the subject of the record, or any representative designated by that person.

PILT

Payment in lieu of taxes (mostly used by counties)

PLENARY SESSION

All parties in attendance

POLICE POWER

Municipalities have the authority to regulate and enforce the general health, safety, and welfare of the inhabitants within their jurisdictions.

PROCLAMATION

A public or official announcement, particularly one dealing with a matter of great importance.

PROPERTY

(See also Utilities)

C.R.S. § 31-15-101(1)(d) gives municipalities the general power to acquire, hold, lease and dispose of property, both real and personal. Home rule municipalities often have charter provisions governing municipal property. Art. XI, sec. 2 of the Colorado Constitution, prohibiting municipalities from making any "donation or grant" to private entities, may apply where municipal property is disposed of without compensation, or for inadequate compensation.

Statutes granting authority and providing procedures in connection with particular types of municipal property include:

- C.R.S. § 31-15-701 (public buildings)
- C.R.S. § 31-15-702 (streets and alleys)
- C.R.S. § 31-15-714 (city and gas interests in municipally owned land)
- Parts 2 and 3 of art. 25 of title 31 (parks)
- Part 7 of art. 25 of title 31 (cemeteries)

Statutory provisions for the disposition of municipal real property, by sale or lease, appear at C.R.S. § 31-15-713. Paragraph (a) requires an election to dispose of real property that is used or held for any governmental purpose. Property not so used or held may be disposed of merely by ordinance.[26]

C.R.S. § 31-15-801 authorizes municipalities to acquire property (including land, buildings, and equipment) through long-term rental and leasehold agreements although lease/purchase agreements must be carefully structured to avoid debt problems. TABOR limitations concerning multiple fiscal year obligations and associated public vote requirements must be considered in connection with lease/purchase arrangements.

C.R.S. § 29-1-506 requires the governing body of each political subdivision to make an annual inventory of its real and personal property having an original cost that equals or exceeds an amount established by the governing body of each local government. Statutory authority for municipalities to insure their property appears at art. 13 of title 29.

PROVISIONAL BALLOTS

A ballot used to record a vote when there are questions in regards to a given voter's eligibility.

PUBLIC FACILITIES

Any facility including but not limited to buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

PUBLIC HEARING

An official meeting where members of the public hear the facts about a planned road, building, etc., and give their opinions about the agenda item.

PUBLIC SERVANT

A person who is employed by the government, either through appointment or election.

PURCHASING AND PUBLIC WORKS

There are surprisingly few statutory requirements as to purchasing supplies or services or contracting for public projects. C.R.S. § 31-15-201(e) authorizes, but does not require, municipalities to adopt ordinances providing that supplies shall be furnished by contract with the lowest bidder. Purchasing procedures are sometimes established locally, by charter provision, or by ordinance. CML's 1996 publication, *Municipal Purchasing: Organization, Techniques and Strategies for Public Procurement* provides more detailed information on purchasing procedures.

The statutes provide a preference for Colorado labor on public works projects, violation of which will be punished criminally.[27] Art. 19 of title 8 provides that preference shall be given to a resident bidder over a nonresident bidder on a construction contract for a public project equal to any preference given by the nonresident bidder's state or country. A preference for resident commodities and services is given in art. 18 of title 8, similar to the art. 19 preference for construction contracts.

The only other statutory bidding requirement to be found is C.R.S. § 31-15-712, which requires that public improvement construction contracts of $5,000 or more for cities (not towns) be let to "the lowest responsible bidder on open bids after

26 C.R.S. § 31-15-713(b).

27 Art. 17 of title 8.

ample advertisement." Further requirements for particular types of projects are found at C.R.S. § 31-25-503(2), § 31-25-516, § 31-25-611 (improvement districts), § 31-35-602 (compulsory sewer sections), and § 29-4-109 (housing projects).

C.R.S. § 31-4-109 permits city councils of mayor-council cities to contract for professional services and to pay "such fees and charges as may be agreed upon." Thus, there appears to be no compulsory bidding or other restrictions for these cities in the area of professional services.

C.R.S. § 18-8-308 is a criminal provision requiring disclosure of conflicts of interest in connection with government contracts, purchases, and other transactions. See above at Section 2.9 for more discussion of conflicts of interest.

C.R.S. § 38-26-105 and § 38-26-106 requires performance and payment bonds for contractors on public works projects, where the contract exceeds $50,000. Art. 91 of title 24 regulates the timing of payments to contractors in public works construction projects where the contract exceeds $80,000. C.R.S. § 38-26-107 provides a procedure for "final settlement" of public works construction contracts.

QUORUM

Minimum number of members of the governing body (or other board or authority) that must be present to take official action.

REFERENDUM

The practice of submitting to popular vote a measure passed on or proposed by the governming body.

RESOLUTION

A document adopted by the governing body to enact rules and procedures; less formal than an ordinance. Used to establish or update fees, to accept grants, to award contracts, to designate place of meetings or posting of notices.

RETENTION GUIDE

Colorado Municipal Records Retention Schedule; may be adopted by a municipality to direct records retention periods.

SDA

Special District Association of Colorado (*www.sdaco.org*)

SEVERANCE TAX

A tax imposed upon nonrenewable natural resources that are removed from the earth.

"SHALL" VS. "MAY"

"Shall" means must be done; "may" means it is optional.

SPECIAL IMPROVEMENT DISTRICT

A mechanism to acquire certain kinds of public improvements and transfer all or part of the costs to property owners benefited by the improvements, through "special assessments" against the property.

Municipalities can create special improvement districts (SIDs) as a mechanism to acquire certain kinds of public improvements and transfer all or part of the costs to property owners benefited by the improvements, through "special assessments" against the property. If bonds are to be issued to obtain money to finance the improvements, TABOR requires a public vote on the issuance of such bonds. For more information, see CML's *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

The most commonly used statutory authorization for special improvement districts is part 5 of art. 25 of title 31. Part 6 of art. 25 also uses the term "improvement districts" but involves ongoing districts with broader powers, including taxing power and the power to operate improvements. Fragmentary statutes authorizing municipalities to make improvements and assess costs against property owners appear at C.R.S. § 31-15-702(l)(b), § 31-15-703, § 31-15-704, and § 31-15-401(1)(d).

Special improvement districts should not be confused with special service districts organized under title 32 as separate local governmental entities, although there are some cross-references between the two sets of statutes. Art. XX, sec. 6 of the Colorado Constitution specifically grants home rule municipalities authority over special assessments for local improvements, and home rule municipalities frequently do provide their own procedures by charter provision or by ordinance.

The process of creating a special improvement district can be started either by a petition of present owners or by resolution of the municipal governing body.[28] When the district is initiated by petition, the petition must be signed by the "owners of property to be assessed for more than one-half of the entire costs estimated by the governing body to be assessed" (or, where two or more "assessment units" are included in the proposed district, in each such unit).

SPECIAL EVENTS LICENSE

State and local liquor licensing authorities may issue special event permits to particular types of organizations, municipalities, and political candidates, permitting them to sell alcoholic beverages for a limited number of days at specific locations.[29]

SPECIAL SERVICE DISTRICT

A service district in Colorado is a political subdivision of the state within a municipality or county in which the unit's governing board levies an additional property tax in order to provide extra services to the residents or properties in the district. A service district is not a separate government. Colorado law limits the types of services that county government can provide, and special districts are formed to fill the gaps that may exist in the services the county provides and the residents desire. Simply stated, special districts raise money to pay for services or projects from those property owners that most directly benefit from the services or projects.

STATUTE

A law passed by the legislative authority that governs a country, state, city, or county.

STATUTORY TOWN OR CITY

Statutory towns and cities are subject to state statutes. Title 31, art. 24, part 1 for cities, and title 31, art. 4, part 3 for towns.

STRONG MAYOR

A strong mayor form of government provides an elected mayor to have almost total administrative authority with a broad range of independence in the municipality.

SUNSHINE LAW

A law that mandates that meetings of governmental agencies and departments be open to the public at large.

TABOR

Taxpayer Bill of Rights, passed in 1992 in Colorado. This limits the amount of revenue a municipality (or the state) can retain. For more information, see CML's *TABOR: A Guide to the Taxpayer's Bill of Rights* (2011).

TAXING DISTRICT

Jurisdictions such as fire, school, water, etc. that produce a tangible service to area residents.

TERM LIMITS

The number of times (or length of time) an elected official may serve consecutively in any given office. The Colorado Constitution establishes a maximum of two four-year or three two-year terms of office for elected officials. Local governments may modify or eliminate term limits with voter approval.

TOWN

Traditionally, a muncipal corporation with a population of 2,000 or fewer. C.R.S. § 31-1-101(13).

TREASURER'S REPORT

An income and expense statement and a balance sheet for the past fiscal year.

28 C.R.S. §§ 31-25-503(1)(a) and (d).

29 C.R.S. § 12-48-101 et seq.

USDA-RD

The U.S. Department of Agriculture Rural Development (*www.rurdev.usda.gov*) works with state and local governmental entities and public and non-profit organizations to provide funding options to communities throughout rural America.

USE TAX

Consumer use tax is payable to the state by individuals and businesses when sales tax is due but has not been collected. Individuals and businesses always have been required to pay sales or use tax on taxable purchases from out-of-state vendors if the item is sold, leased, or delivered in Colorado for use, storage, distribution, or consumption in the state.

UTILITIES

The power to own and operate public utilities is specifically conferred upon home rule municipalities by art. XX, sec. 1 of the Colorado Constitution. Statutory grants of power to acquire, own, and operate utilities are found at C.R.S. §§ 31-15-707 to 31-15-709, § 31-32-201, and § 31-35-402. These statutes contain election requirements for acquisition of utilities other than water and sewer utilities. An election is also required for the disposition of utility property pursuant to C.R.S. § 31-15-713(a).

Art. V, sec. 35 of the Colorado Constitution has been held to prohibit Public Utilities Commission (PUC) regulation of municipal utilities to the extent that they operate within the municipal boundaries. However, extraterritorial municipal utility services that are operated as "public utilities" are not constitutionally exempt from PUC regulation. The municipal provision of water service has been held to be in a different category from other utilities, however, because of the existence of C.R.S. § 31-35-402(1). This statute has been construed to prohibit PUC regulation of municipal water service regardless of whether that service is inside or outside municipal boundaries.

There are federal and state constitutional constraints on the procedures used to terminate certain utility services for delinquencies. For this reason, municipal officials should work closely with the municipal attorney in situations where the possible termination of utility services arises.

WEAK MAYOR

The "weak" mayor in a mayor/council municipality has no formal authority outside of the council/board.

WORK PRODUCT

Materials which are deliberative or advisory in nature assembled for the benefit of elected officials for the purpose of assisting them in reaching a decision within the scope of their authority.

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APPENDIX

CML
COLORADO MUNICIPAL LEAGUE
The Voice of Colorado's Cities and Towns

FAQ: Forms of municipal government

The FAQ column features frequently asked questions submitted to the Colorado Municipal League. This information is of a general nature and should not be interpreted as legal advice. Local facts determine which laws may apply and how, so you should always consult your municipal attorney before proceeding.

Q: What are the different types of municipal government?

A: The forms of municipal government generally fall into one of the following four categories: mayor–council, council–manager, commission, and town meeting. The town meeting form of government is scarcely used outside of the New England area, with only the towns of Ophir and Ward allowing this structure in Colorado. This type of government requires that all voters attend one annual meeting and make all policy decisions lead by an elected moderator.

The mayor–council form can be broken into two types — strong mayor and weak mayor. Under this system, a mayor can hold a wide variety of responsibilities that varies in each instance.

The council–manager system is the most common form of municipal government nationally, and in Colorado. Under this form, the administration of the city is left to an appointed professional manager. The authority for statutory cities and towns to make this appointment is derived directly from the state statutes. Cities have the express authority to appoint managers pursuant to C.R.S. § 31-4-210, and towns can appoint administrators pursuant to C.R.S. § 31-4-304. In this form of government, policymaking is retained by the council and the mayor's responsibility is restricted to presiding over meetings and making appointments to boards and commissions. Generally, the mayor may be a voting member of the council and may have a limited veto power.

Lastly, the commission form has elected commissioners who serve collectively as the leadership and policymaking entity. The individuals in the commission are also the heads of the various administrative departments in the municipality. This form of municipal government is not extensively relied upon; in Colorado, some statutory towns currently use this model.

Q: What is the difference between the strong mayor system and the weak mayor system?

A: The line between these two systems is not easily drawn. When it comes down to it, the differences can be very subtle. In essence, the amount of power delegated decides which side of the line the system falls. Generally, under the strong mayor system, a mayor has the authority to prepare and control the budget, appoint and remove department heads, and directs the activities of departments.

The weak mayor system is more common in Colorado. This system gives the mayor limited power of appointment because principal offices are filled by election or council. Also, the weak mayor has no budget authority and little to no administrative control. The mayor's role in this system is mostly to preside over meetings and may have a limited veto power.

Q: What are the advantages and disadvantages of the strong mayor system?

A: One of the advantages of the strong mayor system is the strong leadership with centralized responsibility. This in turn can mean more efficient and effective policy implementation as a strong mayor is able to hire and fire department heads and is largely responsible for the municipality's budget decisions. Denver is currently the state's only municipality that uses this system of government, and has used this system for a long time.

Some feel that the focused responsibility may be too much for a single person, and this can be seen as a disadvantage. This could lead to political agendas becoming developed as a strong mayor may forge alliances by offering benefits for support. Also, because a mayor may not be a professional administrator there are concerns of inefficiency or that the concentrated power could lead to appointments based on political reasons rather than experience or abilities.

Q: What are the advantages and disadvantages of the weak mayor system?

A: The weak mayor system is the most traditional method of municipal government, and some may see this as an advantage. With this long historical tradition comes some evidence that this system works well in small and rural municipalities. Because power is shared equally between members of the board, the representative council is able to effectively represent constituents' needs and objectives.

On the other hand, under the weak mayor system, power and responsibility are diffused, which can lead to a lack of accountability. Another possible disadvantage is that there is a lack of strong and clear leadership.

Q: What are the advantages and disadvantages of the council–manager system?

A: This system is the most common choice for municipalities. In Colorado, 171 of the state's 272 municipalities operate with this system. A municipal administrator or manager is a professional manager and, as such, is able to utilize experience to effectively oversee the needs of the city. Also, with a professional manager, the city is run more like a business that can lead to an increase in efficiency and effectiveness. Further, under the council–manager system, the council retains all of the policy control, which allows for the constituents' needs to be well represented.

One disadvantage of this system is that, like the weak mayor system, there is no strong effective political leader. There can also be a conflict between the council and the manager who may try to usurp policy functions.

Q: What is the function of a mayor in the council–manager system?

A: The mayor's role and appointment in the council–manager system can be quite varied. Some municipalities appoint mayors

from the pool of councilmembers by a vote of the council. Others elect their mayors directly with votes from the general population. There are two municipalities in Colorado that have chosen to forgo a mayor and instead have a council president. They are Steamboat Springs and Pueblo.

The actual duties of a mayor can also vary. Some mayors vote as normal members of the councils, with only the authority to preside at meetings. Other mayors are only given votes in order to break a tie in the voting process. Lastly, some mayors have varying degrees of veto powers over council decisions. In some respects, the use of a mayor can create a hybrid between the council–manager system and the mayor–council system.

Q: What are the advantages and disadvantages of the Commission system?

A: The strongest advantage of the commission system is that the structure is simplistic and works well in emergency situations. Because of the simple structure policy implementation is swift.

However tempting swift action might be, it is important to note that there are no checks and balances in this system because all policy functions are held in a single governing body. Further, it can be very difficult to elect council members with administrative abilities necessary to run the city. Lastly, because there is no one person with the overall administrative responsibility, there is also less accountability for the actions taken by the commission.

Q: How often do municipalities change their form of government?

A: Changes in the structure of municipal government do not happen very often; however, in 2009, the City of Pueblo's residents voted on whether to change from a council–manager form to a strong mayor form, and the voters elected to continue to use the council–manager system. As of 2010, the Cities of Wheat Ridge and Colorado Springs have citizen initiatives being discussed that would change their current structure from council–manager to variations of the strong mayor form.

For more information, visit the National Civic League at *www.ncl.org*, the National League of Cities at *www.nlc.org*, the International City/County Management Association at *www.icma.org*, or the Strong Mayor-Council Institute at *www.strongmayorcouncil.org.*