

So You Want a New Charter

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Among the states of the Union, some 25 of them have home rule constitutional provisions which permit local drafting and adopting of city charters.¹ Under these circumstances, the community becomes the tailor shop to design, cut and adapt a charter for the local body politic. Fitting a charter to a particular city or village is often the task of locally elected charter commissioners, aided and advised by citizens, consultants, lawyers and, last but not least, interest groups.

If as a citizen you are involved in such a process, various arguments, concepts, and counter-views will be thrown at you. Unless you use some frame of reference to sort out the propositions, you may well be confused. What I have to say herein, won't be the last word, but is designed to be a series of first words as you approach the task.

As to Form

Can you approach the question of form of government for your community with an open mind? You may be urged to write a strong-mayor or a council-manager charter. Both sides will want to sell you on the inherent values of one system or the other. You will have to listen patiently to many arguments which overstate the case. Listen patiently, but remember that no system has built-in operating features which will prove out in every city or village. You must estimate how the political dynamics of any plan are likely to work out in *your* specific city or village.

The key to the strong-mayor system is a directly elected mayor with responsibility for leadership in community programs and for supervision of administrators. The council is predominately a legislative body without direct authority over administrators.

The mayoral system is sometimes defined as either weak-mayor, strong-mayor, or strong-mayor-administrator. The weak-mayor plan developed early in the nineteenth century. Under this concept councils confirmed mayoral appointment of administrators and often exerted some supervision over administrators through council committees. As mayors developed sole responsibility under charters to appoint and remove department heads and to exert an influence over policy through the executive budget, they became

known as strong mayors. In this century, the development of chief administrative officers to assist strong mayors led to the strong-mayor-administrator scheme.

Proponents of the strong-mayor plan (with or without a general administrator under the mayor) often argue that this is more apt to produce dynamic political leadership in cities of more than 500,000 population or in lesser sized cities. The theory is that the elected, independent mayor leads in policy and controls the administrative bureaucracy.

Philadelphia is one city where a managing director assists the mayor in supervising a large number of operating departments. New Orleans is another example, because a chief administrative officer serves under the mayor.

To the contrary, the council-manager plan provides topside for a political, collegial responsibility with the mayor within the council. Most charters accord to the mayor under this system a role as presiding officer, a first among equals. The general manager is responsible to the council, and administrators of city departments are subordinate to the manager. For larger cities the issue is whether this kind of pluralism at the top is satisfactory in terms of political leadership.

To avoid fuzziness in charter drafting, a charter commission should devote its initial work to a firm decision on the form of government to be used. Without such a decision on the part of the charter commission, it is virtually impossible for a consultant to advise or a lawyer to draft the provisions as a city council and the working executive.

To illustrate the problem, let us assume that the charter commission makes a preliminary decision to prepare a council-manager charter. Many important collateral decisions follow. First among these is the scheme of political representation which has many facets: size of council, methods of nomination and election, terms of councilmen, salary or honorarium. Second is the question of how the mayor is to be selected whether by direct election, selection by his colleagues, or some other process and his role as chairman of the council. Third comes the city manager where models and actual charters have established well-known norms as to his duties and responsibilities. Fourth is the necessity of spelling out clearly the powers and procedures of the city council as a decision-making body with power to appoint and remove the manager. In a fifth phase come thorny problems as to how much detail a charter should contain as to departmental organization, fiscal agencies, personnel administration, planning and line departments, such as police, fire, public works, and public utilities.

If in the course of drafting a council-manager charter, the charter commission reverses its initial decision and orders a strong-mayor draft, months of effort will be wasted. The job then becomes one of junking much of what has been done, and in effect, starting all over again. The design of the council and of the working executives are so different under the two systems that the basic concepts and drafts as to council-manager simply will not fit the strong-mayor form.

Council-Manager Concepts

The nub of the council-manager plan lies in the small council, serving as a collegial body. The mayor, whether selected by his colleagues or elected separately, serves as the chairman of the group. His role is one of political leadership rather than executive power. Council-manager cities over 5,000 divide rather evenly between those selecting the mayor by and from the council and those directly electing the mayor. A few city charters provide that the individual receiving the highest number of votes in the council election becomes the mayor.

A small council of five, seven, or nine is common practice for council-manager systems. Seven is an adequate number and overlapping tenure has merit, especially in association with a four-year term. One possible way to assure the election of a majority of councilmen every two years is popularly known as "low man on the totem pole." Of the four council members elected, the one with the smallest number of votes gets only a two-year term, rather than the standard one of four.

The emphasis, in my view, can well be placed on the election of council members at large. For many cities the nonpartisan ballot has also proved workable. If it is necessary to introduce a district system of election, consideration of alternatives such as election of some by districts and others at large is then in order.

The targets in composition of the council are nomination and election at large, nonpartisan ballot, overlapping tenure, four-year terms except for the low man on the totem pole, seven councilmen and keeping the mayor, however selected, as chairman of the council.

The management doctrine as to managerial duties is more settled than the political issues of electing councils and selecting mayors. Charters give evidence of similarity in

defining executive management but diversity in schemes of political representation. However structured, a council becomes a forum for formal decision making and takes the responsibility for appointing and removing managers.

Policy and management tend to run together in practice no matter how defined in theory or allocated by charter chapters. The duties of managers are perceived in terms of general supervision of the administration and of the enforcement of laws and ordinances. A key responsibility which inevitably brings managers into policy is the preparation of the annual budget and annual capital improvement program for council action. In administrative management, the source of managerial power is the capacity to appoint and remove department heads and other key subordinates. Liaison with the council involves regular reports on city operations and financial conditions, an annual report, and attendance at council meetings with authority to speak. Finally, managers are usually vested with responsibility to carry out all other duties specified by charter or prescribed by council. Most of these managerial powers and responsibilities are customarily incorporated in charter language.

No charter can define precisely the intricate teamwork which must exist between a manager and council in order to promote good practice in policy making and administration. However, precision in spelling out the office of manager will clarify the key administrator's responsibility over administration and suggest his potential role in policy making.

A charter must give a manager supporting arms for the executive tasks to be performed. He needs a well defined and integrated finance department to deal with budget preparation, accounting and pre-auditing, treasury management and property tax assessments. Either through a division within the finance department or a separate unit under his control, the manager will carry out the purchasing function. There is much to be said for bringing the city's law department under managerial control. Personnel administration is another key facet of management. The personnel officer likewise is logically part of the management team, although there may well be an advisory personnel board in a semi-independent status. For the bulk of employees a merit system is properly spelled out in general terms in the charter. Even the planning director in modern management concept must be closely related to the manager rather than

responsible to a semi-autonomous planning commission. Managers have developed as a profession and their organization is the International City Managers' Association. ²

Strong-Mayor Concepts

For a variety of reasons, some charter commissions conclude that the council-manager system is not the best choice for their city. Since the weak-mayor plan and government by commission are rarely recommended today, the alternative is most likely to be strong-mayor. A decision in favor of a strong-mayor charter brings into play another series of concepts.

The directly elected strong mayor is designed to lead in policy and to be responsible for executive supervision over departments. In many respects he performs a role similar to managers in policy formulation and control over the administrative mechanism. But, as a direct representative of the voters, he is usually free to disagree sharply with the city council, to veto ordinances and resolutions, and to hold himself responsible directly to the voters for the adequacy of administrative operations. In other words, he is a servant of the people, not of the council, and possesses with the council a co-equal mandate from the voters.

There is more to this system than the office of strong-mayor. The charter commission must have some reasonable estimate that candidates will be available in the community, either on a partisan or nonpartisan basis, to devote full time energies to the job of being a strong mayor. The mayor's salary should be geared to a full-time position, unless the commission decides to create a post of chief administrative officer under the mayor. The CAO will then be a full-time officer whose principal duty will be that of assisting the mayor in administrative management of city departments. He may also aid the mayor with the executive budget and formulation of overall policy to be presented to council.

Under the strong-mayor or strong-mayor-administrator plan, many of the executive duties assigned to city managers are properly centered in the mayor's office. They may be exercised by the mayor alone or by the mayor assisted by a CAO. Since in other than great cities it is sometimes difficult to get candidates for a full-time mayoral office, much can be said for creating a CAO in conjunction with a strong mayor. ³

Once a charter commission has decided for a strong-mayor system, the council can be more freely designed than under the council-manager plan. The latter calls for the council to be a small "board of directors." But the strong-mayor system can presumably use a larger council with many variations in systems of nomination and election. This is not to say that any old kind of design can be used for the council under the strong-mayor system. But size, system of election, whether at large or by districts, type of ballot, and other features do not have to conform to a small group of directors. However designed, the council will be matched by a powerful directly elected executive who will hold direct powers in the areas of policy and administrative operations. The council will no longer be the sole mechanism for policy and leadership.

No one can do more than advise a charter commission whether the strong-mayor or council-manager system is to be preferred in a given community. The ultimate decision properly belongs to the charter commissioners.

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- 1 Authorities by no means agree on a list of home rule states. My preference is for a basic list of twenty-five constitutional home rule states: Alaska, Arizona, California, Colorado, Hawaii, Louisiana, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia and Wisconsin.

This does not tell the whole story. Nevada has never passed any implementing legislation. On the other hand, Connecticut without specific constitutional language has had a viable legislative home rule system since 1957. New Jersey is sometimes cited as a home rule state, because of its optional laws (alternative forms and sub-options) which permit local discretion in adaptation. Although Virginia is primarily an optional charter state, statutory procedures permit a local commission to prepare a draft charter, obtain local approval, and then request legislative enactment. Under limited constitutional language (1945) Georgia permitted a form of home rule in 1951. But the State Supreme court invalidated the legislation in 1953. A new constitutional provision pertaining to "local self-government" was ratified in 1954, but has not been implemented. All this helps to explain the variations in the many lists of constitutional home rule states.

- 2 Information about the council-manager plan can be obtained from the International City Managers' Association, 777 N. Capitol St. NE, Washington, DC. The Model City Charter, is a council-manager charter. This is published by the National Civic League, 1445 Market St. Suite 300, Denver, Colorado 80202-1717, and is not in its 8th edition (2003). It provides alternative methods for the selection of councils and mayors under the council-manager system, defines managerial powers, and articulates the administrative system under the manager.

- 3 There is no model strong-mayor administrator charter comparable to the Model City Charter (council-manager). The 6th edition of the Model City Charter, pp. 73ff., briefly sets forth the principles of the mayor-CAO plan. The origin of the strong-mayor-administrator system is usually dated by the San Francisco charter of 1931. More recent illustrative models from the 1950's are: Los Angeles, Newark, New York, New Orleans, and Philadelphia. By way of caution, the CAO system is only a general term, and each city vests differing powers and duties in the CAO. For example, New Orleans has a CAO (under the Mayor) who spans most of the administrative mechanism; Philadelphia uses a "managing director" to supervise the line (operating) departments; and Newark employs a business administrator with formal powers as to budget personnel, and purchasing.