

# Understanding Your Municipal Charter

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In an MML fall conference workshop titled "Understanding Your Municipal Charter," presenter and City of Taneytown attorney Jay Gullo set out to answer four fundamental questions:

- Where do municipalities derive their home rule authority?
- What powers does that authority entail?
- What is a municipal charter, and what should it look like?
- How do we amend our charter?

## Origins

Municipal power, Mr. Gullo observed, comes from two sources: Article XI-E of the Constitution of the State of Maryland and the laws of the State of Maryland, in particular Articles 23A and 66B of the state's *Annotated Code*. These sources provide Maryland municipalities with their home rule authority, essentially allowing cities and towns to pass local laws without specific approval from the General Assembly. All incorporated cities and towns possess this authority, which is exercised through the municipality's charter. By way of contrast, not all counties have home rule authority. Several counties have chosen to retain a commissioner form of government requiring action by the Maryland General Assembly in order to enact or amend public local laws.

## Powers

The state grants authority to municipalities in two fashions, both located within Article 23A of the *Maryland Annotated Code*. Section 2(a) provides cities and towns with broad general authority, stating that:

*Every municipality "shall have general power to pass such ordinances not contrary to the Constitution of Maryland and public general laws, as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality."*

Section 2(b) sets out a variety of "express powers" – at last count, a total of 37 – ranging from more mundane powers

such as creating a municipal band and creating a town seal to the more substantive such as the authority to maintain a police force, condemn property, and impose reasonable fees and charges.

Mr. Gullo also drew attention to those powers municipalities do not possess and the limits that may persist despite certain authority being defined among municipal express powers. For example, even though municipalities are granted the power to establish curfews, doing so must be within the confines of federal equal protection standards as well as First Amendment protections against violating freedom of movement and association. Furthermore, although state law often preempts municipalities from regulating within certain areas such as liquor sales, professional licensing, and motor vehicles, municipalities may be able to deal with an issue through other established authority. Mr. Gullo gave the example of loud truck exhaust systems where, although municipalities cannot regulate motor vehicles directly, a town may be able to mitigate the problem by establishing and enforcing a noise ordinance.

## The Municipal Charter

Mr. Gullo defined a municipal charter as "a statement of power grants and limitations that is unique to each municipality." Each charter should be written, fluid, unique, and express limited authority. Among the characteristics commonly found in a municipal charter are:

- Name of municipality
- Description of corporate limits
- General and express powers
- Form of government
- Details on elected body
- Election standards
- Financial management
- Personnel management

The charter may also include other provisions related to water and sewer service and planning and zoning – if such powers are exercised by the town and granted by the state – and authority related to special assessments and regulation of public ways. In general, your charter should speak primarily to matters of municipal authority and structure of government rather than ordinary legislative and regulatory concerns.

## Amending Your Charter

At various points during his presentation, Mr. Gullo made reference to the frequently obvious, though sometimes overstated, comparisons made to both the U. S. Constitution and the charters of entities like business corporations and civic organizations. However, the one characteristic that each of these documents certainly shares is the need to be periodically revisited and revised.

Amending your charter should always be a broadly deliberative process, reflecting the needs and desires of the community. Mr. Gullo particularly discouraged municipal leaders from amending the charter “to achieve short-term, tactical political goals” like reducing or expanding the authority of the mayor based on perceptions of the incumbent. Some of the more common reasons for amending the charter include adapting to recent court decisions or the enactment of new federal and state laws.

The process for amending your charter is set out in very specific detail in Sections 11 through 17a of Article 23A in the *Maryland Annotated Code*. The law, however, establishes two ways to initiate that process: one starts with the municipal governing body, and the other with the municipal residents.

Amendment by the governing body simply involves passing a resolution in the manner you normally would, making sure you use the exact wording of the amendment and limiting each amendment to one subject as prescribed by the law. This must be followed by public notification in two forms: (1) posting an exact copy of the amendment for 40 days after its passage, and (2) publishing a “fair summary” of the amendment four times at weekly intervals in a newspaper of general circulation. The charter amendment becomes effective 50 days after passage if it is not petitioned to referendum.

If the town’s voters do petition the amendment to referendum, the referendum must be held either at the next general election or at a special election between 40 and 60 days after the petition is received. Any effort to bring the amendment to referendum must include a petition signed by 20% of the town’s qualified voters, which then must be presented to the governing body within 40 days after passage of the resolution. If the referendum is successful, the charter amendment fails. If the charter amendment passes, it takes effect 30 days after public proclamation of the election results.

For a charter amendment to be initiated by the citizens, a petition containing the exact wording of the amendment in a format prescribed by the law must be signed by 20% of the qualified voters and presented to the municipality’s governing body. The governing body then has 60 days to either (a) approve a referendum for the next election, (b) schedule a special election to occur within the next 40 to 60 days, or (c) simply adopt the proposal as if it were initiated by the governing body itself.

Regardless of which approach a municipality takes, your charter amendment should be forwarded to the Maryland Department of Legislative Services within 10 days of final passage.

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This helps to guarantee that everybody – elected officials, state agencies, and your citizens – are all working off the same page. For additional information on the charter amendment process including the relevant text from Article 23A, you can access the Maryland Municipal League’s *Charter Amendment Handbook* on the MML website’s Top Ten Document page at <http://www.mdmmunicipal.org/research/topTen.cfm>.

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