

CITY OF CANANDAIGUA

2016 CHARTER REVIEW COMMISSION

WHAT IS A “CHARTER”?

- ▶ It is the basic document that defines the organization, powers, functions and essential procedures of city government.
- ▶ It provides the basis for most municipal regulatory functions and for the delivery of municipal services. It is the City's Constitution.
- ▶ The charter affects everything city government does and is, therefore, the most important single law of any city.
- ▶ The City of Canandaigua was first chartered by New York State in Chapter 371 of the Laws of 1913. The Charter was amended in 1966 to create the Council-Manager form of government. It was also amended in 1978 and again in 1993. It was codified in the City's Municipal Code Book in 2007.

HISTORICAL BACKGROUND

- ▶ The first State Constitution, adopted in 1777, recognized the colonial charters of two cities, New York and Albany.
- ▶ The NYS Constitution further provided that the legislature should “arrange for the organization of cities and incorporated villages and to limit their power of taxation, assessment, borrowing and involvement in debt.” Thus, a special legislative act was required to establish each new city and to amend a city charter.
- ▶ By 1834, seven new cities had been chartered along the State’s principal trading route, the Hudson-Mohawk arterial between New York City and Buffalo. These new cities were Brooklyn, Hudson, Utica, Troy, Schenectady, Rochester and Buffalo.
- ▶ Thirty-two more cities were created between 1834 and 1899.
- ▶ In 1913 Canandaigua was chartered as the 50th city of New York.
- ▶ The last city established by charter is Rye, which came into being in 1942, as the 62nd city.

MUNICIPAL HOME RULE

- ▶ Although the basic purposes and functions of cities are similar there is no standard requirement for size or population.
- ▶ Municipal home rule was a major issue at the Constitutional Convention of 1894, and as a result of those discussions, cities were divided into three classes by population to enable the Legislature to pass general laws that would address the problems of cities of various sizes.
- ▶ Finally, in 1924, a Home Rule Amendment to the Constitution, followed by the enactment of the City Home Rule Law, granted powers to cities to choose their own form of government and to amend their charters by local law without special action by the Legislature.
- ▶ The provisions of the City Home Rule Law were incorporated without substantial changes into the present Municipal Home Rule Law when it was enacted in 1963. This law guides the charter review process today.

CITY CHARTERS: THE CONSTITUTIONAL AND STATUTORY AUTHORITY

- ▶ The nature and scope of subject matter which may be included in a city charter or charter amendment is the same that cities may accomplish by local law.
- ▶ The grant of local law powers to cities is derived from the New York State Constitution, Article IX, as implemented by, and spelled out in, the Municipal Home Rule Law.
- ▶ Under this basic grant of local law power, cities may:
 - ▶ 1. Adopt or amend local laws in relation to their “property, affairs or government” that are not inconsistent with the provisions of the Constitution or with any general law; and
 - ▶ 2. Adopt or amend local laws not inconsistent with the Constitution or any general law relating to several specifically enumerated subjects, whether or not these subjects relate to the “property, affairs or government” of cities.
- ▶ The term “property, affairs or government,” as used in section 10 of the Municipal Home Rule Law, constitutes a broad grant of local law power to cities to manage their governmental affairs and operations and to discharge their responsibilities to satisfy local needs, as those needs are perceived in the cities themselves.

Specific permissible topics of local laws

- ▶ The powers, qualifications, number, mode of selection, removal, terms of office, compensation and hours of work of its officers and employees;
- ▶ The creation and discontinuance of government departments;
- ▶ The protection of its environment;
- ▶ The health, safety and welfare of persons and property within its boundaries;
- ▶ The licensing of businesses and occupations;
- ▶ The levy, collection and administration of local taxes and assessments;
- ▶ The acquisition and management of real and personal property;
- ▶ The authorization of benefit assessments for local improvements; and
- ▶ The membership and composition of its legislative body.
- ▶ In some instances, a city's scope of authority to adopt and amend its charter may be broader than the city's local law power. The provisions of any existing charter, or general or special state law previously enacted conferring a right, power or authority or imposing a duty or obligation on a city may be continued in a new city charter or amendment of an existing charter.
- ▶ If the State legislature has delegated a specific power to a city, even though the city in the first instance had no authority by local law to assume for itself such power, the power may be continued in a new charter or amendment of an existing charter.

Restrictions on the Content of City Charters

- ▶ The power of cities to enact local laws is subject to several limitations which likewise limit their authority to adopt and amend their charters.
- ▶ The constitutional grant of authority to cities for the adoption of local laws itself contains certain restrictions. A local law cannot be inconsistent with a general state law or the New York State Constitution.

(A general law is a law enacted by the State Legislature which in terms and effect applies alike to all cities.)

- ▶ The State Legislature in enacting the Municipal Home Rule Law (section 11), specifically restricted the adoption of local laws with respect to several particular subject areas. For example, a local law may not supersede a state statute if the local law removes a restriction relating to the issuance of bonds or other evidences of indebtedness; affects the maintenance, support or administration of the educational system or a teachers' pension or retirement system; or applies to or affects the courts.

Restrictions on the Content of City Charters

continued

- ▶ The scope of local law authority is restricted with respect to subjects which the courts have determined to be areas of state concern. A matter of state concern is a subject area which the courts have decided affects the residents of the entire state rather than only the “property, affairs or government” of a particular locality. The courts have determined that such areas include taxation, transportation and highways, parks, incurring of indebtedness, water supply, education, social services, health, banking, rapid transit, civil service, housing and municipal boundaries.
- ▶ Local laws may not be enacted with respect to subjects for which state law clearly indicates a state purpose to preempt or completely occupy a particular field. Preemption occurs when state regulation in a particular area is so comprehensive as to indicate an intention to exclude local legislation.

Why should cities undertake charter revision?

- ▶ A good charter should provide a clear distribution of the powers of city government and clear descriptions of the duties and powers of municipal officials. It is essential for effective citizen participation that the general public be able to understand the basic document of their municipal government.
- ▶ Charter revision can result in improved city government organization and operations.
- ▶ Reconsideration of governmental structure can result in elimination of costly unproductive positions. Clear delineation of lines of responsibility and authority facilitates the work of municipal officials and employees.

FORMING A CHARTER REVIEW COMMISSION

- ▶ New York State Municipal Home Rule Law §36 sets forth the procedural requirements for establishing a Charter Review Commission:
- ▶ 1) The City Council may adopt a local law providing for the establishment of the Commission. This action requires the same formalities as all other local laws, including postings and public hearings, before it could be filed with the State and the review process could start; or
- ▶ 2) The City Council may submit the question of whether or not a Charter Commission should be formed to a referendum, requiring the electors to vote on the matter at either a general or special election; or
- ▶ 3) The Mayor may create a Charter Review Commission consisting of at least 9 but no more than 15 members, who are all residents of the City of Canandaigua. The Mayor simply needs to designate the number of positions and name the individual members by filing a Certificate of Appointment with the City Clerk/Treasurer. The Mayor must also designate the Chairman, vice-Chair, and Secretary from among the named members.

Basic organization

- ▶ Once established the Commission will need to establish a committee structure and devise a work plan. Issues that may be considered at the first meeting are:
- ▶ How often the Commission will meet;
- ▶ Whether it will establish its own set of rules or operate under general parliamentary rules (particular attention should be given to defining a quorum);
- ▶ How decisions will be made (by simple or extraordinary majority vote or by consensus);
- ▶ What, if any, are the Commission's financial needs; and
- ▶ What type of expert assistance may be needed.
- ▶ Each member of the Commission should be familiar with the current city charter before deliberations start. Members should become familiar with the legal and constitutional provisions that affect the work of a charter commission and those relating to city charters in general.

THE CHARTER COMMISSION AT WORK

- ▶ Research and analysis of the existing municipal government is necessary to permit Commission members to identify areas of municipal organization and operations which can be improved by charter changes. This step can be accomplished by a combination of two techniques:
 - ▶ 1) a review of operating budgets, departmental annual reports and other documents can reveal patterns of city government organization and operations.
 - ▶ 2) a survey of the department heads and possibly other employees by questionnaire or interviews, or both, conducted by Charter Commission members may provide valuable insights to determine the extent to which the government is currently operating according to provisions of the charter and to supplement testimony given by department heads at meetings of the Charter Commission.

THE CHARTER COMMISSION AT WORK

continued

- ▶ The Charter Commission might simultaneously undertake a general review and analysis of the existing charter because this work and the governmental survey are closely interrelated.
- ▶ Several questions to be answered during this preliminary phase are whether the charter is outdated, whether it is too detailed, whether it is ambiguous concerning the powers and duties of various city officials and operating units, and whether it is internally consistent.
- ▶ It is at this stage, in the identification and description of key issues and alternative courses of action, that the Charter Commission may want to seek out assistance to guide it through the crucial stage of identifying and considering major issues and making decisions essential for charter drafting.

Orderly Review

- ▶ It is essential to follow a systematic format for orderly presentation and discussion of topics.
- ▶ If possible, the Commission should reach decisions on all major issues before charter drafting is started. If all major questions have been resolved, the Commission will be able to devote full attention to questions on how the decisions can best be implemented.
- ▶ The charter drafter can then be given the necessary information and guidelines to prepare a first draft of a revised charter.
 - ▶ (The Charter Commission, as a body, should not attempt to write a charter.)
- ▶ If no consultant is available for the task, the Commission members should be organized into small committees to handle the drafting of specific sections, with one person responsible for assembling the separate drafts into an internally coherent charter.
- ▶ If the revised charter is a short document, it may be feasible for the Commission to review the entire draft as a unit. However, it may be necessary to present the draft one section at a time as it is completed. (This procedure will divide the workload more evenly over time and avoid swamping the commission at the end with a lengthy document to be reviewed under deadline pressures.)
- ▶ As discussion proceed on draft proposals, it is, of course, permissible for the Commission to reverse its judgments in light of further reflection, additional information or insurmountable difficulties in developing implementing language.

Public Hearings and Referenda

- ▶ In the case of charter revision submitted by a commission a public hearing is not mandatory, but highly desirable.
- ▶ A new charter or charter amendment proposed by a City Charter Commission must be submitted to the city's voters for approval.
- ▶ A Commission may submit a single proposal to the qualified electors of the city: *"Shall the new City Charter proposed by the City Charter Commission be adopted?"*
- ▶ The Charter Commission may, however, require that its proposed charter be submitted in two or more parts.
- ▶ No provision for the election of any elective officers by any system of proportional representation shall become effective unless a definite question with respect to the adoption of such system for the election of such officers shall have been submitted as a separate question and separately approved.

COMMISSION AUTHORITY AND RESPONSIBILITIES

- ▶ The Commission may conduct public hearings at times and places that it deems necessary.
- ▶ The Commission has the power to conduct private hearings, take testimony and subpoena witnesses and documents.
- ▶ The Commission shall appoint and may remove such employees and consultants as it shall require and fix their compensation. It may accept any services, facilities or funds and use or expend the same for its purposes.
- ▶ As a result of public hearings, the Commission may make further revisions.
- ▶ The only legal obligation to be met by the Charter Commission is the responsibility for publication or publicity, as it deems proper, of the provisions of the proposed charter or amendments.
- ▶ Such new charter or amendments must be completed and filed no later than the second general election after the Charter Commission is created and organized.
- ▶ **TIMETABLE (proposed amendments must be filed by Sept. 6, 2018 at latest)**
 - ▶ File with the City Clerk/Treasurer → wait at least 60 days → Vote at next General Election