

## **Model Framework for a City Charter: An Overview**

### **Introduction**

A municipal charter is a legal instrument that establishes the institutional framework of a municipal government and the scope and (geographic) jurisdiction of its authority.

A municipal charter defines many of the rights, responsibilities and resources of a municipal government. In so doing, a charter structures a municipal government's relationship with local residents and other orders of government -- the constituencies from whom it receives its political legitimacy and financial support.

Ten components of a model Canadian municipal charter are outlined below:

### **Part 1: Preamble (Guiding principles and concepts)**

A municipal charter may begin with a preamble. The function of the preamble is to:

- Lend shape and coherence to the charter statute by specifying the core concepts and assumptions upon which it is based.
- Provide direction to public officials, the courts and the general public on how to interpret the charter.

Examples of core concepts that could be incorporated into a charter's preamble include:

- The notion that a municipal government is an autonomous and accountable order of government.
- The idea that a Province should consult with a city before taking decisions that directly impact that municipality or its residents.
- The notion that a Province has an obligation to provide a municipality with the level of financial resources and legislative authority required to appropriately discharge its responsibilities.

### **Part 2: City Purposes**

The "City Purposes" section of a charter describes, in broad outline, the function and responsibilities of a municipality. A city's purposes will usually map closely onto its "spheres of jurisdiction" since it makes no sense to assign a purpose to a governmental entity that lacks the authority required to achieve this purpose. Accordingly, a charter could include a sub-section on "spheres of jurisdiction" within this section or simply refer to "spheres of jurisdiction" instead of "city purposes".

This section might draw a distinction between intrinsic and instrumental municipal purposes. The former consists of broadly recognised “ends-in-themselves”, which any level of government could legitimately lay claim to pursue. The latter set of purposes could be considered essential “means-to-these-ends”, that is, the set of activities that a city government needs to carry out in order to achieve its intrinsic purposes. Providing for peace, order and good government could be considered an intrinsic city purpose. Representing a city’s interests to non-residents, other governments and businesses outside the city could be considered an instrumental municipal purpose.

Similar to the preamble, one of the functions of this section is to guide future interpretations of the statute by lawmakers, administrators, the general public and the courts.

### **Part 3: General Provisions**

The “General Provisions” section of a municipal charter can be used to define key characteristics of the municipality and its local government, and to provide further guidance to public officials and the courts on how the charter itself ought to be interpreted.

Key characteristics that could be defined in this section include the corporate identity of the municipal government itself (e.g. “The inhabitants of the city of Winnipeg are incorporated as a body corporate in the governmental entity know as the City of Winnipeg”) and the name of the decision-making body (e.g. City Council) entitled to exercise authority on its behalf.

General provisions of a municipal charter could:

- Establish a city’s right to define its own priorities and exercise full discretion within its spheres of jurisdiction or while pursuing activities that are consistent with municipal purposes.
- Recommend that the charter’s provisions be interpreted broadly.
- Recommend that a general power specified in the Charter not be interpreted as being limited by a specific power or vice versa.

### **Part 4: Democratic Control, Access and Accountability**

A modern municipal charter is likely to reflect the core democratic values of public participation and accountability. Provisions designed to safeguard these values may be bundled together in a distinct “Democratic Control, Access and Accountability” section or woven throughout the charter. Taken together, these provisions aim to limit abuses of power by public officials and to ensure that a municipal government remains responsive to the concerns and interests of the local electorate and residents.

Important aspects of municipal governance that could be addressed in this section include:

- *Local design, assent and amendment of the charter:* A draft charter could be developed through one of two scenarios. A Province could decide to draft by itself a charter that it deems to be in the best interests of a municipality. Alternatively, a Province could pass enabling legislation or otherwise permit a city council and/or its residents to draft their own charter. In either scenario, a charter can be crafted so as to require the approval of a city council and/or local residents before coming into force. Similarly, a charter could include an amending provision that allows the local council and/or electors to recommend to the Province that amendments be made to the charter.
- *Elections for council and mayor:* To ensure that council members remain responsive to residents' concerns a charter could require municipal elections to be held on a regular basis.
- *Community Engagement:* A charter can provide voters (and other residents subject to a council's decisions) with the means to become more directly involved in local decision-making through various community engagement mechanisms, including: (i) public consultation requirements and procedures, (ii) petitions, (iii) non-binding referenda, and (iv) binding referenda.
- *Open meetings, public notification, access to information and public hearings:* To provide the public with an opportunity to fully and fairly evaluate the process and arguments by which Council reaches decisions, a charter may require all meetings of a municipal council or its committees to be open to the public. To further enhance the transparency of municipal government, a charter could specify requirements concerning access to information, public notice, and annual reporting obligations.
- *Conflict of interest policy:* A charter could require city administrators and elected officials to institute and comply with a "conflict of interest" policy.

## **Part 5: Powers**

The nature and strength of the tools available to a municipality to affect the physical environment and the actions of individuals, business and organisations that operate within its boundaries are defined in the "Powers" section of a charter.

One of the central objectives of a charter is to eliminate the need for a province to expressly and specifically delegate powers to municipalities through so-called "laundry-list" legislation. A charter does this by replacing itemised lists of express powers with general grants of authority.

The two broad categories of powers that would typically be included in this section of the charter are:

- *Governmental powers* (e.g. general law- and rule-making authority), including the right to enact and enforce by-laws, issue licenses and permits, and to regulate the activities of individuals and businesses. A city's authority to levy and collect taxes and user fees is likely to be treated in a separate section of a charter.

- *Natural person powers*, which encompasses the set of corporate powers possessed by individuals to engage in normal business transactions such as the right to enter into contracts, hire and dismiss employees or to buy and sell land or assets.

This section of a charter is also likely to contain provisions restricting certain general grants of power (e.g. assigning a municipality some, but not all, natural person powers) or reserving a Province's right to do so in the future. In addition, a charter could include one or more authority-limiting provisions, such as a clause identifying certain policy areas or activities over which the Province retains exclusive or primary jurisdiction.

## **Part 6: Financial Instruments and Revenue Sources**

The financial instruments and revenue sources provided to a municipality through a charter are perhaps the best indication of the degree of autonomy that a Province intends to offer a charter-recipient. Financial issues addressed in this section of a charter might include:

- *Financial planning, management and accountability*: To lessen the likelihood that municipal officials will abuse any of their new (or strengthened) financial powers, a charter might include various financial planning, management and reporting requirements. For example, a provision requiring a city council to establish modern, efficient and/or fair procedures for imposing and collecting taxes and user charges might be specified in this section.
- *Charges and fees*: A modern municipal charter can empower a city to assess development charges and user-fees. The former are designed to recoup the capital costs of providing new or expanded buildings with hard or essential services, while the latter aim to recover the full administrative and overhead costs of providing a core municipal service, work or facility.

A charter could also authorize a municipality to charge fees for non-core services (e.g. for services provided to a business improvement district) or for the extraordinary use of a particular municipal service or work.

- *Municipal-Provincial fiscal arrangements*: Clarifying the inter-governmental fiscal relationship between a city and the Province is one of the central aims of a charter. Three aspects of this relationship that could be addressed in a charter are:
  - Transfer of a share of provincial tax revenues to a city
  - Payment for services rendered by the municipality on the Province's behalf and/or transfer of tax revenue collected by the Province on a city's behalf.
  - Financial guarantees with respect to provincially initiated off-loading or service realignment (e.g. a provision obliging the Province to allocate adequate, appropriate and sustainable financial resources to a city whenever it requires a municipality to assume responsibility for a provincial program, service or facility).

- *Taxes*: A charter is likely to be very specific about which types of taxes a city is permitted to levy. The set of taxation powers accorded to a municipality by a modern municipal charter would likely reflect some or all of the following principles of taxation:
  - *tax efficiency*: the notion of collecting taxes from all groups who benefit from public services in order to ensure a better fit between the supply and demand for public services
  - *tax equity*: the notion that different classes of taxpayers be required to pay their fair share of taxes and/or that residents' ability-to-pay is somehow factored into the level of taxes they owe
  - *cost recovery and conservation*: the notion of using tax policy and user fees to ensure that consumers and businesses face the full "cost" of engaging in certain activities
- *Other financial instruments*: A modern municipal charter could provide a city with access to an array of flexible financing and revenue-generating instruments, including franchises; sale and leaseback arrangements; utility agreements; borrowing money for non-capital purposes; issuing bonds; tax-incentives; offering loans and grants; etc.

## **Part 7: Intergovernmental Relations**

Does the Province consider a municipality to be an accountable, responsible and effective order of government? This question can be addressed in the Intergovernmental Relations section of a charter through the inclusion or exclusion of provisions that:

- Prohibit the provincial government from arbitrarily interfering in any matter that falls within a city's defined spheres of (exclusive) jurisdiction or municipal purposes.
- Require the provincial government (or responsible Minister) to *consult* with the City when contemplating legislative, financing, or policy changes that would materially impact the municipality or its residents.
- Oblige the Province to allocate adequate, appropriate and sustainable financial resources to a municipality whenever it requires a city to assume responsibility for a provincial program, service or facility.
- Authorise a city to communicate, negotiate and enter into partnership agreements with other governments, including the Federal government, on matters of mutual interest that fall within the city's defined spheres of jurisdiction.

## **Part 8: Alteration of the City's Boundaries**

A charter might include a separate section or provision which limits the Province's ability to unilaterally alter the municipality's boundaries. For instance, a Province's authority to alter the boundaries of the City could be made subject to (i) preparation and distribution of a feasibility

report on the proposed boundary change, (ii) approval of the city council, (iii) approval of the electors, and/or (iv) neighbouring jurisdictions' approval if the proposed boundary change involves amalgamation or annexation.

## **Part 9: Governance**

The basic rule-making and administrative structures of a municipal government can be articulated in a charter's "Governance" section. Examples of items that might be specified in this section include:

- The name, number and composition of a municipality's rule-making body (e.g. a council comprised of 1 mayor and 18 councillors), whether its members are to be elected at-large or by electors from a specific area of the municipality (e.g. "ward"), and the boundaries of any electoral "wards".
- Requirements and exceptions concerning "quorum" and the venues (i.e. meetings) at which the city's decision-making body may legitimately make decisions.
- Roles, responsibilities and terms of office for each category of elected official (e.g. mayor and councillors), and council's authority to establish officer positions, including a Chief Administrative Officer (CAO), clerk, and treasurer.

## **Part 10: Actions and Proceedings**

A charter could delimit a city's obligations and rights with respect to a variety of "actions" and "proceedings" integral to its role as a governmental entity. Provisions of this sort might address such matters as (i) a municipality's authority to enforce by-laws, (ii) "rights of action" on illegal by-laws, (iii) civil liability and limits thereon, and (iv) requirements for serving "notice" to a city, whether for filing a complaint, initiating a legal proceeding or other purposes.