

Model Framework for a City Charter

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 City Charter structures a municipal government's relationship with local residents and other orders of government – the constituencies from whom it receives its legitimacy and financial support.

A modern municipal Charter should help government officials, the courts and the general public to answer the following questions about the city to which it applies:

- (i) What types of powers is the municipality entitled to exercise?
- (ii) Where (i.e. location) is the municipal government able to exercise its authority?
- (iii) What are the municipality's essential decision-making structures and procedures?
- (iv) From whom and how does the municipality receive its political legitimacy, legal authority, and financial resources? To whom and how are municipal officials held accountable?

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Part 1: Preamble

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 essential concepts and assumptions that could be included in the preamble of a Charter include:

- 1. Citizens accord legitimacy to municipal government (among other ways) by paying taxes to support local services and voting in local elections. It is therefore appropriate for the Province to regard municipalities as an autonomous and accountable order of government.**

The Charter might require the Province to relate to the City as if it were an autonomous, accountable order of government. The implications of this principle could be specified in further detail in other parts of the Charter.

- 2. Citizens expect municipal, provincial and federal government officials to co-ordinate their efforts so as to improve the efficiency and effectiveness of government action. It is therefore appropriate for the Province to:**

(I) Consult with the City before taking decisions that directly impact the City, and

(II) Allow the City to negotiate directly with the Federal government.

Recognising the City as an accountable and autonomous government, the Charter could enshrine the City's right to be consulted before provincial authorities take any actions (or develop policies) with a direct and significant impact on the City.

- 3. Citizens cannot give full expression to their preferences or hold elected representatives accountable if their government has neither the financial resources nor the legislative authority to fulfil its responsibilities.**

The Charter could require the Provincial government to provide the City with financial resources and autonomy (i.e. authority and decision-making discretion) in line with 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”.

It is both possible, and potentially useful, to make a distinction between the intrinsic and instrumental purposes of a municipal government. 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 must carry out in order to fulfil its intrinsic purposes.

Intrinsic purposes of a City might include providing for:

- Democratic expression of the citizen’s values, priorities and beliefs
- Peace, order and good government;
- The health and (economic and social) well-being of current and future generations of City residents
- The safety and protection of persons and property

Instrumental purposes of a City might include:

- Stewardship of the City’s (financial, human, social and physical) assets
- Stewardship of the City’s natural environment
- Ensuring the integrity of the process and mechanism by which binding collective decisions are made and enforced
- Representing the City’s interests to non-residents and other governmental and corporate bodies outside the city
- Ensuring the impartial, efficient and effective application of municipal laws and regulations
- Supporting the active participation of all individuals and groups in the public life and politics of the City

Part 3: General Provisions

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

Examples of key characteristics that could be defined in this section include:

- (i) The nature of the City itself. (e.g. *The inhabitants of the City of ____ are incorporated as a body corporate in the governmental entity known as the City of ____*).
- (ii) The name of the decision-making body entitled to exercise authority on the City’s behalf. (e.g. *The powers, duties and functions of the City are performed or exercised by its Council*).
- (iii) The relationship between one decision-making session and the next. (e.g. *Anything initiated in one term of Council may be continued or completed in a subsequent term of Council*).
- (iv) The territorial boundaries of the municipality and the corresponding area over which it has jurisdiction. (e.g. *Except as otherwise provided in this Charter, the City and its council may only perform or exercise their powers, duties and functions within the city boundaries, as specified in Schedule 1*).

To provide additional guidance to courts, public officials and the general public on how it ought to be interpreted, a municipal Charter could:

- (v) 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. (e.g. *The City has the right to determine the local public interest and to act within its spheres of jurisdiction without interference from the Provincial legislature, unless provincial or federal statute expressly prohibits such actions*).
- (vi) Recommend that the Charter’s provisions be interpreted broadly.
- (vii) Recommend that a general power specified in the Charter not be interpreted as being limited by a specific power or vice versa.
- (viii) Sketch out a dispute resolution process to be used by City and provincial officials if any future disagreements arise over the meaning of the Charter.

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 various parts of the Charter.

The provisions of this section 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 a Charter with an eye toward enhancing accountability include:

- (i) Local design, assent and amendment of the Charter
- (ii) Elections for Council and mayor
- (iii) Community engagement
- (iv) Open meetings, access to information, public notice and hearings
- (v) Reporting and performance measurement
- (vi) Conflict of interest policy

Local design, assent and amendment of the Charter

Design: 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.

Assent: Irrespective of whether provincial officials or local residents design the Charter, the assent of local residents and/or City council could be required before it comes into effect. In such cases, a Charter (or its enabling legislation) would need to specify an appropriate mechanism for determining whether Council and/or the electors support the proposed statute. In particular, the authors of a Charter must consider whether a simple majority or some other threshold of support (e.g. a super-majority of 2/3) constitutes the requisite “approval”.

Amendment: A Charter could include an amending provision that allows either the Council and/or electors to recommend to the responsible Provincial minister that changes be made to the Charter.

Elections for council and mayor

To ensure that Council members remain responsive to residents’ concerns a Charter can include provisions requiring local elections to be held on a regular basis (e.g. every 3 or 4 years) and for any Council seat vacated in mid-term. Alternatively, a Charter could subject itself to Provincial

statutes that specify the rules, schedules and procedures that are to be followed with respect to local elections.

A Charter could also subject a city to provincial campaign finance legislation (if such exists) or require a city council to develop a campaign finance by-law within a specified period of time.

Community engagement

A Charter can provide voters (and other residents and businesses subject to Council decisions) with various means to become more directly involved in local decision-making. A range of community engagement mechanisms could be supported in a Charter, including:

- Public consultation requirements and procedures
- Petitions
- Non-binding referenda
- 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 Council or its committees to be open to the public. The conditions under which a Council or committee meeting may be closed to the public and/or officers or employees of the City could be specified of the Charter.

To further enhance the transparency of municipal government, a Charter could also require that:

- (i) By-laws be enacted in a public meeting
- (ii) The “open meeting” provisions of the Charter apply to all committees, commissions, advisory bodies and entities exercising City or Council powers
- (iii) Council state (either by resolution or in a public notice) the reason for going “in camera”

A Charter could also insist upon and articulate specific standards for public notification and public access to municipal records. This could be done by detailing practices in the Charter itself or by referring to existing Provincial legislation.

Similarly, a Charter could require and/or authorise Council to develop a bylaw specifying a procedure and requirements for public hearings.

Annual reporting requirements

To help the public to hold their elected representatives accountable, a Charter could require Council to report or otherwise make available to the public each year the following:

- The City's budget
- Detailed information about the City's operations and services
- The City's latest audited financial statements
- A (required) business plan
- A report on the City's goals and objectives
- Information about any violations of the City's conflict of interest policy
- Disclosures made under the financial disclosure provisions of the Charter
- A record of total remuneration, expenses and benefits paid to Council members; and
- A record of gifts received by Council members

Conflict of interest policy

A Charter could help to establish clear standards of professional conduct and integrity by requiring 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.

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)
- Natural person powers (i.e. corporate powers)

This section of a municipal Charter could also define a city’s powers with respect to a particular class of objects or public services (e.g. property or highways) or stipulate how a change in circumstances alters a city’s authority (e.g. emergency powers).

A city’s revenue-generating mechanisms are an integral component of its governmental power. However, the significance and complexity of this area means that it is likely to be treated in a separate section of the Charter.

Governmental Powers

Governmental powers granted to a city through a Charter could include some or all of the following:

- Authority to enact bylaws, resolutions and regulations bestowing either positive rights (i.e. entitlement to do or receive something) and negative duties (i.e. requirement to refrain from doing or receiving something) upon individuals, corporations and organisations.
- Authority to enforce by-laws and create punishable offences
- Authority to apply for injunctions
- Authority to expropriate property
- Authority to establish a service or program or undertake activities in pursuit of legitimate City purposes
- Authority to impose fees
- Authority to issue licences and permits
- Authority to delegate or transfer services or authority to another body
- Authority to levy taxes

Regulatory Powers

An essential element of a municipality's governmental power is its regulatory authority, which typically includes the power to prohibit, authorise, control, inspect, limit and restrict the activities of individuals, businesses and organisations.

A Charter can qualify a general grant of regulatory powers in various ways. Provisions that might be used to qualify regulatory powers are listed below:

- A provision that subjects the city's power to regulate to any specific conditions or restrictions specified in the Charter itself or other provincial statutes.
- A provision requiring the Council to enact a bylaw governing the city's regulatory practice, which in turn obliges the municipality to follow various procedures (e.g. public notification) when implementing a regulation in order for it to be deemed valid.

Other provisions in this section could elaborate upon a municipality's authority to grant licenses, permits, approvals, or to develop and require compliance with codes and standards.

Natural person powers

In Canadian law, natural person powers ascribe to an entity (e.g. municipality) the authority to do whatever a person is entitled to do, especially with regards to conducting day-to-day business transactions. For instance, a municipality with unabridged natural person powers has the right to enter into contracts, hire and dismiss employees, and buy and sell land or assets.

An example of a Charter provision bestowing natural person powers on a City might read as follows: *"The City has the power, capacity, rights and privileges of a natural person of full capacity, except to the extent expressly limited or restricted under this Charter"*.

Natural person powers can be grouped into various categories, including:

- Contractual powers (e.g. authority to enter into any form of agreement)
- Commercial powers (e.g. authority to own shares of a corporation or control a corporation)
- Instruments of commerce (e.g. authority enter into a partnership; grant an exclusive right or monopoly; make a loan or grant a mortgage)
- Rights of expression and philanthropy (e.g. authority to give or sell land, goods or services for less than fair market value; establish a foundation; give grants or bonuses for economic development, political purposes or cultural support)
- General powers (e.g. have the capacity to sue and be sued, including the right to sue for defamation or other "personal" torts)

Limitations on a City's Powers

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. By enacting a City Charter as a provincial statute, a province essentially says to a municipal government: “Within this geographic area, and with regards to these types of activities and purposes, you are free to do decide upon your own course of action. You don’t need to ask us for permission to do every little thing.” In other words, a Charter replaces itemised lists of express powers with general grants of authority.

Nonetheless, a Charter is likely to contain provisions restricting some of these 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 which apply to all (or most) of the statute:

- A provision that expressly declares policy areas (or a range of activities) over which the Province retains exclusive or primary jurisdiction (e.g. mining and minerals; access to information and protection of privacy; human rights, etc.), even if these activities might reasonably be understood to be “local matters”.
- A provision which establishes the “consistency rule” for determining the validity of a City bylaw. This rule declares that a City bylaw, or a provision of it, is not valid if it is inconsistent with the Charter or a provincial statute, regulation, or order. A bylaw is considered to be inconsistent with a provincial statute if in order to comply with it, a person or organisation must violate a provincial law.
- A “claw-back” provision which anticipates and defines the conditions under which the provincial government is entitled to re-assume authority it has delegated to the City under the Charter. Such conditions might include: (i) meeting with City officials prior to invoking a “claw back”, (ii) a requirement to issue a public report outlining the government’s rationale for reassuming delegated authority, or (iii) a requirement to hold public hearings on the question of whether it is appropriate for the Province to exercise its claw-back authority.

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 the Charter-recipient. After all, having wide discretion to set priorities and make expenditures is an empty privilege for a municipality with limited revenues or access to financing.

A Charter's financing provisions are likely to address five broad topics:

- i) Financial planning, management and accountability measures
- ii) Charges and fees for core municipal functions
- iii) Municipal-Provincial fiscal arrangements
- iv) Taxes
- v) Other financial instruments

Financial planning, management and accountability

A Charter may include various financial planning, management and reporting requirements to lessen the likelihood that municipal officials will abuse any of their new (or strengthened) financial powers. Examples of such provisions include:

- A provision requiring a city to prepare a (medium or long-term) financial plan on a regular basis.
- A provision requiring a city council to establish modern, efficient, and/or fair procedures for imposing and collecting taxes and user charges. This provision might refer to "administrative fairness" rules or other relevant definitions set out in the Charter.
- Certain grants of grants of tax-levying authority may be accompanied by various sub-provisions concerning the tax subject's right of appeal, the frequency of tax assessment (for property tax), or other measures to ensure the municipality exercises its taxing authority in an appropriate, fair and effective manner.

Charges and fees

A modern municipal Charter can authorise a city to assess development charges and user-fees. Development charges are designed to recoup the capital costs of providing new or expanded buildings with hard, essential services. User fees aim to recover the full administrative and overhead costs of providing a core municipal service, work or facility. With respect to the latter, a key consideration is whether a Charter should allow a city to impose user-fees that are "in the

nature of a tax”. Doing so would permit a city to set rates above the level required to recoup administrative expenses in order to provide for:

- Anticipated capital expenses (e.g. for replacement, future development, extensions, etc.)
- Repair and maintenance, or
- Incentives to encourage the proper use or socially-optimal “consumption” of a service, work or facility (e.g. instituting a variable user fee for use of a city’s sanitary system so as to discourage individuals or firms from depositing harmful or dangerous items in the system)

A Charter could also authorise a municipality to charge fees for non-core services (e.g. such as those provided to a business improvement district) or for the extraordinary use of a particular municipal service or work. These provisions provide a city with the flexibility it needs to address the unique circumstances of certain residential or commercial groups.

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 likely to be addressed in a Charter are discussed below:

(i) Transfer of provincial income and sales tax to the City

A Charter could include a provision obliging the Province to transfer to a city a portion of provincial income, sales tax or other type of tax (e.g. gas tax, vehicle registration fee, etc.), as part of either a special commitment to the city or a broader provincial revenue sharing program.

(ii) Payment for services rendered by the City to the province or transfer of tax revenue collected by the Province on the City’s behalf.

A Charter could include provisions that require the Province to issue payment or reimbursement to a municipality arising from various forms of inter-governmental co-operation. For example:

- A provision requiring the Province to reimburse a city for any expenses it incurs for holding in custody at a municipal detention facility individuals who have been charged with Provincial offences.
- A provision establishing a Provincial obligation to transfer to a city all fines and penalties it collects for motor vehicle moving violations committed within the municipality’s boundaries.
- A provision requiring the Province to transfer to a municipality (less an agreed upon administrative fee) the full amount of any tax that it has collected on the city’s behalf.

(iii) *Financial guarantees in case of off-loading or service realignment*

A Charter could include a provision obliging the Province to allocate adequate, appropriate and sustainable financial resources to a city whenever it requires the municipality to assume responsibility for a provincial program, service or facility.

In addition, a Charter could require the Province to consult with city officials before taking any decision that would result in the city assuming responsibility (voluntarily or involuntarily) for a provincial service, program 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 in a modern municipal charter would likely reflect some or all of the following principles of taxation:

- (i) *Efficiency*: Ensuring a better fit between the supply and demand for public services by (i) providing a city with the authority to collect taxation revenue from all groups who benefit from the services it provides and/or (ii) access to “buoyant” sources of tax revenue that rise and fall in line with economic cycles.
- (ii) *Equity*: Ensuring that all groups of taxpayers (e.g. owners of commercial, institutional and commercial property) pay their fair share of taxes and/or that residents’ “ability-to-pay” is reflected to some degree in the taxes which they owe to the city.
- (iii) *Cost recovery and conservation*: Certain private decisions and commercial transactions (e.g. choosing to drive a car) impose a cost on society – and a city -- that is not fully reflected in the price that individuals must pay to engage in such activities (e.g. social, economic and health costs of automobile pollution and congestion). A charter could equip a city with the tax revenue it needs to recover these costs (e.g. dedicated share of provincial or federal fuel tax) and/or to discourage the activity which imposes these so-called “negative externalities” in the first place.

A Charter could allow a municipality some flexibility with regards to tax abatement, assignment, collection scheduling and so forth – in other words, the ability to use tax incentives as a policy tool.

Other financing tools and revenue sources

A modern municipal Charter could provide a city with access to innovative (non-traditional) financing and revenue-generation instruments. These tools include:

- franchises
- sale and leaseback arrangements
- utility agreements
- borrowing money from private capital markets, using assets to secure better rates

- borrowing money from a Provincial or Federal loan fund
- issuing bonds (i.e. revenue bonds, general municipal bonds, etc.)
- using tax-incentives to attract, leverage and retain private capital
- tax-incremental financing
- authority to offer loans and grants and to make financial guarantees

While these mechanisms differ in many significant respects, they all provide a city with the capacity to enter into risk-sharing arrangements with outside parties in order to (i) gain access to revenue or capital that would otherwise be unavailable and/or (ii) direct private investment capital to public uses.

Since these instruments are not likely to be well-understood by the public *and* because the level of debt carried by a given city can affect the credit-rating of municipal governments in an entire region, a Charter may limit a city's use of or access to these tools.

Part 7: Intergovernmental Relations

Does the Province consider a municipality to be an accountable, responsible and effective order of government? This question is likely to be addressed in the Intergovernmental Relations provisions of a Charter. Inclusion of the following provisions would be the most direct way for a Province to acknowledge a municipality's political legitimacy.

- A provision which prohibits the Provincial government from arbitrarily interfering in any matter that falls within a city's defined spheres of (exclusive) jurisdiction or municipal purposes.
- A provision which requires the provincial government (or responsible Minister) to *consult* with the City whenever legislative, financing, or policy changes that will impact the City are being developed.
- A provision obliging the Province to allocate adequate, appropriate and sustainable financial resources whenever it requires a city to assume responsibility for a provincial program, service or facility.
- A provision authorising a city to communicate, negotiate and enter into partnership agreements with other governments, including the Federal government and other municipalities, on matters of mutual interest that fall within the city's defined spheres of jurisdiction.
- A provision mandating that the City's bylaws apply to Provincial government entities (including crown corporations and agencies), unless otherwise agreed.

Part 8: Alteration of the City's Boundaries

A charter could include a separate section or provision limiting the Province's ability to unilaterally alter the municipality's boundaries. A Province's authority to alter the boundaries of a charter city could be made subject to some or all of the following conditions:

- Preparation and distribution of a feasibility report on the proposed boundary change
- Approval of the City council
- Approval of the electors
- Approval of neighbouring jurisdiction if the proposed boundary would involve amalgamation or annexation of a neighbouring jurisdiction's territory

Part 9: Governance

A Charter's governance section defines a municipality's basic political structure and units of governance. Governance provisions could refer to existing legislation, directly specify, or require Council to develop by-laws related to the following matters:

- 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 (or "ward") of the municipality, 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)
- A Council's obligation to enact a bylaw establishing rules of procedure for meetings of the Council, committees and other such bodies
- A Council's obligation to establish a procedure for consolidating, revising and correcting errors in bylaws
- A Council's authority to establish committees to advise and made recommendations to Council.
- A Council's authority to establish commissions to advise or make recommendations to Council, or to operate or assist in the operation of the City's services or assets
- Conditions under which a Council is authorised to delegate its powers, duties or functions to other entities (e.g. committee, officer, employee, community council, corporations, etc.)
- A 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 the 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 the following matters:

- The City's authority to enforce bylaws
- "Rights of action" on bylaws considered to be illegal
- Civil liability issues (e.g. indemnification against proceedings; limitation of liability; joint and several liability; personal liability of City's public officers; limitation period for action against City; etc.)
- Procedure to be followed for serving "notice" to the City, whether for filing a complaint, initiating a legal proceeding or for other purposes.