TOWN OF MILLIKEN
TOWN BOARD
AGENDA MEMORANDUM

To: Mayor Woodcock and Board of Trustees From: Kent Brown, Town Administrator	Meeting Date: Wednesday, August 24, 2016

Agenda Item #	Action:	Discussion: X	Information: X
Agenda Title: Discuss next steps regarding possible home rule election			
Attachments: Materials distributed previously; applicable C.R.S.			

PURPOSE

If the Board is in favor of considering a change in the type of governing structure, namely converting to a home rule jurisdiction, then this discussion item will involve a discussion and overview of the steps needed in the process to create a home rule charter commission and a preliminary discussion of the associated public communication process(es) that would lead up to the Board's decisions.

BACKGROUND

At a previous work session, Town Attorney Michow provided an overview and background materials regarding home rule and the differences with a statutory town form of local government. In addition, Ms. Michow provided an overview of the major procedural steps that would need to be taken in order to convert from a statutory town to a home rule jurisdiction. Mayor Woodcock has asked staff to present a general outline on the procedures or steps that should or must be taken leading up to an ordinance that would refer the question to a public vote.

RECOMMENDATION

Staff recommends that the following steps be taken, at a minimum, to start informing the public about any proposal for home rule:

1) Ask Town Attorney Michow to give a formal presentation at a future regular Board meeting.

2) Direct staff to prepare an information sheet that could be included with the utility bills.

3) Discuss the possibility of having an open forum at a date to be determined to answer questions from the public and decide who should be present at the open forum.

Municipal home rule overview

What: Municipal "home rule" is a form of government under the control of local citizens rather than state government. It is "self-government," meaning municipal rather than state control over the organization and operation of local government activities. Home rule governance is authorized under our state constitution and affords citizens of cities and towns the ability to adopt a local charter which enables the city to act without the need for state enabling legislation and to frame its organizational structure.

Under a home rule charter, it is the city elected officials making decisions over local affairs rather than the state legislature making these determinations. It is argued that being home rule, and deciding issues of local concern at the local level is more representative of the desires of the citizens because representation and decision-making at the local level is less diluted than representation on a broader scale.

90% of the state's population reside in home rule municipalities.

Issues of Local Concern:
If the City becomes home rule, it would be authorized to act on matter of local concern, including, but not limited to:

- Structure of government: city manager/council; removal or reinstatement of elected city clerk; treasurer
- land use matters (how we handle zoning and development within the City),
- construction defects
- regulation of employees
- local elections
- procedures for initiative and referendum
- economic incentives to attract business to our community,
- how the city handle nuisances such as weeds and stockpiling of junk
- how the city regulates animals (breed specific bans are not allowed under state law)
- self collection of sales tax, whereas now the Colorado Dept. of Revenue collects sales tax and remits to the city.
- Tax imposition – requires a vote, but statutory is limited. Eg., statutory municipal sales tax limit of 4%.

Limitations in a home rule charter might include:

- Access to district court; require municipal court prosecution first.
- Condemnation by super-majority of council
- Emergency ordinances (effective with only one reading)
- Sale or lease of public property

Process:

A. Council must pass an ordinance initiating the home rule process.

HOME RULE

Linda Michow
Maureen Juran

What Does It Mean to Be Statutory?

- In order to act, statutory cities must have a specific grant of authority
- If no statute exists regarding a certain problem or issue, the city's hands are tied.

What is Home Rule?

- Autonomy
- Home rule cities derive powers from Article XX of the Colorado Constitution
- Matters of local concern can be customized by the charter and corresponding legislation.
- The City Charter is the guiding document

Home Rule Communities

- Over 90% of State's municipal population lives in a home rule city
- 100 home rule cities
- Nearby municipalities are home rule (Lone Tree, Castle Rock, Parker)

Why do municipalities consider adopting home rule?

- A general desire to achieve more local control and to protect local authority
- A desire or need to exercise, or have available as future circumstances arise, specific powers or procedures clearly or possibly not available to statutory municipalities, such as broader sales tax authority.
- Desire to respond more quickly to changed circumstances or emergency situations by allowing legislative solutions at the local level through ordinances or charter amendments, rather than waiting for action by the state legislature.
- As a matter or pride or desire to acquire the status of other municipalities

Why do municipalities consider adopting home rule?

- The express and implied enabling authority granted in statutes is sometimes ambiguous; home rule allows the municipality to act with greater assurance that its actions are properly authorized, especially if the charter reserves to the municipality authority to legislate on any and all matters of local concern.

Why do municipalities consider adopting home rule?

- By empowering local citizens more directly, home rule enhances citizen control, interest, involvement and pride in their municipal government.
- Home rule is the embodiment of the principle that the best government is the one that is the closest to the people.

Are There Any Limits?

- Federal and state constitutions still apply
- Federal and state laws that address matters that are more than matters of local concern still apply
- Examples of matters of local concern
  - Land use
  - Code Enforcement matters
  - Local Fiscal Matters
  - Term Limits / Structure of governance
  - Publications of Ordinances

When is a good time to adopt home rule?

Considerations when determining a suitable time:

- How are things going in the community—at city hall?
- Are local officials unified in support?
- Is there leadership available from the mayor or a key councilmember to promote home rule?
- What is the level of interest among local officials and the community at large?
- Are there individuals and groups outside city hall that can be expected to be supportive?
- Is there a public mood in the community that might produce a bad charter?

What It Means for Business

- Stronger sense of community.
- More options for economic development.
- Not a license to tax or to increase taxes.
- Self collection is an option.

Process

- Two election process.
- First election starts the process
  - Form commission and elect members (9-21)
  - 180 days to draft a charter
- Council gives notice of an election on approving the proposed charter within 30 days after receipt
- Second election between 30 and 185 days after publication of the notice of election

Basic Charter Considerations

- Charter is principally an instrument of limitation in Colorado.
  - Sets forth the basic structure and organization of government, basic procedures to be followed by municipal government in conduct of its business, basic powers of municipal officials and agencies, including any limitations thereon.
- It could be argued that, the shorter the better!! "City of Brevity" charter!

Basic Charter Considerations

- Must contain:
  - Initiative,
  - Referendum and
  - Recall Procedures
  - Provision addressing ordinances in effect at time of adoption
  - Prefatory synopsis (adopt at the end) (Art. XX, sec. 4)

Other Charter Provisions

- Continuing, amending or repealing existing ordinances
- Form of government – allocation of legislative and administrative powers
- Qualifications, terms of office, number of councilmembers and method of election
- Election procedures
- Administrative organization
- Boards and commissions
- Procedures for passage of ordinances, resolutions and motions

Other Charter Provisions

- Legal and judicial affairs
- Budget control and financing
- Municipal borrowing
- Eminent domain

Basic Charter Considerations

- Take the long view: Not necessary for the charter to spell out the details of municipal operations
  - Leave that to the council to deal with from time to-time.
- State law applies in the absence of a charter or ordinance provision.
- Not easily or readily amended; use great care in drafting and avoid unnecessary details and verbiage.

Critical to Success:

Fostering citizen education and generating support among influential groups and individuals

31-2-108. Continued county services. (1) The county within which any newly incorporated city or town, or any part thereof, lies and the officers thereof shall continue to perform all duties and responsibilities within such territory as required by law and shall:

(a) Continue to apply all zoning, subdivision, and other regulations within the municipal limits of such city or town for a period of ninety days after the election of officers in accordance with section 31-2-104 or until superseded by ordinance, whichever is sooner; and

(b) Continue to provide to such territory and its inhabitants, upon request by the governing body of such city or town, the same services it was providing, which services shall be continued to be rendered until the ad valorem taxes levied by such city or town for the rendering of such services are collected and become available, but in no event for a period longer than one year subsequent to the date of the city's or town's incorporation.

31-2-109. Assessment - taxes - collection. When any municipality incorporates under the provisions of this title or any municipality reorganizes under the provisions of part 3 of this article after the time for making the annual assessment for taxation has passed, the governing body of each such city or town may provide, by ordinance or resolution, for the assessment of taxable property within the corporate limits of said city or town. When such assessment is made and approved by the governing body, it may proceed to levy the necessary taxes for the fiscal year, which levy shall be certified by the clerk of such city or town to the county assessor, who shall extend the same upon the tax list of the current year, as required by section 31-20-104. The county treasurer shall proceed in the collection of such taxes in all respects as provided by law for the collection of taxes in cities and towns. It is not necessary for any such city or town to pass the annual appropriation ordinance or resolution required by section 29-1-108, C.R.S. This section shall apply only to the assessment and collection of taxes for the first fiscal year after such incorporation or reorganization.

PART 2

MUNICIPAL HOME RULE

31-2-201. Short title. This part 2 shall be known and may be cited as the "Municipal Home Rule Act of 1971".

31-2-202. Legislative declaration. The general assembly declares that the policies and procedures contained in this part 2 are enacted to implement section 9 of

article XX of the state constitution, adopted at the 1970 general election, by providing statutory procedures to facilitate adoption and amendment of municipal home rule charters, and, to this end, this part 2 shall be liberally construed. The provisions of this part 2 shall supersede the requirements of article XX of the state constitution, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, as provided in section 9 (3) of article XX of the state constitution.

31-2-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Ballot title" means a ballot title as defined in section 31-11-103 (1).

(2) "Publication" means one publication in one newspaper of general circulation within the municipality. If there is no such newspaper, publication shall be by posting in at least three public places within the municipality.

31-2-204. Initiation of home rule. (1) Proceedings to adopt a home rule charter for a municipality may be initiated:

(a) By the submission of a petition, signed by at least five percent of the registered electors of the municipality, to the governing body thereof; or

(b) By the adoption of an ordinance by the governing body of the municipality, without the prior submission of a petition therefor.

(2) Within thirty days after the initiation of the proceedings, in accordance with either paragraph (a) or (b) of subsection (1) of this section, the governing body of the municipality shall call an election for the purpose of forming a charter commission and of electing members thereof to frame a charter for the municipality, which election shall be held within one hundred twenty days after the date of the call of the election. The governing body shall cause notice of the election to be published not less than sixty days prior to the election.

(3) Candidates for the charter commission shall be nominated by filing with the clerk, on forms supplied by the clerk, a nomination petition signed by at least twenty-five registered electors and a statement by the candidate of consent to serve if elected. Said petition and statement shall be filed within thirty days after publication of the election notice. A second notice of the election, as soon as possible after the completion of filings, shall be published by the governing body and shall include the names of candidates for the charter commission.

31-2-205. Election on formation of charter commission and designation of

members. (1) At the election voters shall cast ballots for or against forming the charter commission. If a majority of the registered electors voting thereon vote for forming the charter commission, a commission to frame a charter shall be deemed formed.

(2) At the election voters shall also cast ballots for electing the requisite number of charter commission members. Those candidates receiving the highest number of votes shall be elected. In the event of tie votes for the last available vacancy, the clerk shall determine by lot the person who shall be elected.

31-2-206. Charter commission. (1) The charter commission shall be comprised as follows:

(a) In municipalities having a population of less than two thousand, nine members; and

(b) In municipalities having a population of at least two thousand, nine members unless the initiating ordinance or petition establishes a higher odd-number of members not to exceed twenty-one members.

(c) (Deleted by amendment, L. 94, p. 1191, § 89, effective July 1, 1994.)

(2) If the petition or ordinance initiating home rule proceedings pursuant to section 31-2-204 (1) or initiating proceedings for forming a new charter commission pursuant to section 31-2-210 (2) specifies that the members of the charter commission shall be elected by and from single- or multi-member districts or by a combination of such districts and at-large representation, the governing body, prior to publishing the notice provided for in section 31-2-204 (2) or 31-2-210 (4), shall divide the municipality into compact districts of approximately equal population. In such event the members of said charter commission shall be elected by and from districts, or partly by and from districts and partly at large, as specified in said petition or ordinance.

(3) Eligibility to serve on the charter commission shall extend to all registered electors of the municipality. Any vacancy on the charter commission shall be filled by appointment of the governing body.

(4) The charter commission shall meet at a time and date set by the governing body, which shall be not more than twenty days subsequent to the certification of the election, for the purpose of organizing itself. At such meeting, the commission members shall elect a chairman, a secretary, and such other officers as they deem necessary, all of which officers shall be members of the commission. The commission may adopt rules of procedure for its operations and proceedings. A majority of the commission members shall constitute a quorum for transacting business. Further meetings of the commission shall be held upon call of the chairman or a majority of the members. All meetings shall be open to the public.

(5) The commission may employ a staff; consult and retain experts; and purchase, lease, or otherwise provide for such supplies, materials, and equipment as it deems

necessary. Upon completion of its work, the commission shall be dissolved, and all property of the commission shall become the property of the municipality.

(6) The governing body may accept funds, grants, gifts, and services for the commission from the state of Colorado, or the United States government, or any agencies or departments thereof, or from any other public or private source.

(7) Reasonable expenses of the charter commission shall be paid out of the general funds of the municipality, upon written verification made by the commission chairman and secretary, and the governing body shall adopt such supplemental appropriation ordinances as may be necessary to support such expenditures. Members of the commission shall receive no compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(8) The charter commission may conduct interviews and make investigations in the preparation of a charter, and, to the fullest extent practicable, municipal officials and employees shall cooperate with the commission by providing information, advice, and assistance.

(9) The charter commission shall hold at least one public hearing in preparation of a proposed charter.

(10) Within one hundred eighty days after its election, the charter commission shall submit to the governing body a proposed charter.

31-2-207. Charter election - notice. (1) Within thirty days after the date that the charter commission submits the proposed charter to it, the governing body shall publish and give notice of an election to determine whether the proposed charter shall be approved, which election shall be held not less than thirty nor more than one hundred eighty-five days after publication of the notice thereof. Such notice of the election shall contain the full text of the proposed charter.

(1.5) The governing body shall set the ballot title for the proposed charter within sixty days after the date that the proposed charter is submitted pursuant to subsection (1) of this section.

(2) If a majority of the registered electors voting thereon vote to adopt the proposed charter, the charter shall be deemed approved and it shall become effective at such time as the charter provides.

(3) If a majority of the registered electors voting thereon vote to reject the proposed charter, the charter commission shall proceed to prepare a revised proposed charter, utilizing the procedures set forth in section 31-2-206, and the governing body shall submit the revised proposed charter to an election in the manner set forth in subsection (1) of this section. If a majority of the registered electors voting on such revised proposed charter vote to adopt the revised proposed charter, it shall be deemed approved and it shall become effective at such time as the revised charter provides. If a