

**ANALYSIS OF THE
SAN JUAN COUNTY CHARTER**

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SAN JUAN COUNTY VOTERS APPROVE CHARTER

Background

Article XI, Section 4, of the Washington State Constitution authorizes the citizens of any of the 39 counties in the state to determine how they will govern local affairs through the adoption of a “home rule” charter. On November 8, 2005, San Juan County became the sixth and smallest county in Washington State to adopt a charter form of governance.¹

This third effort at a charter in San Juan County was initiated by two commissioners who, in 2004, adopted a resolution that called for the election of 21 freeholders.² Citizens ran for the positions, were duly elected, and thereafter spent 20 weekends, over a span of eight months, meeting and having formal and informal sessions researching and writing the charter.³ In August 2005 the freeholders proposed a basic charter and one alternative (an amendment to the basic charter). After these propositions were published, the adoption of a charter and an amendment was set for a vote of the public in the November general election.⁴

Purposes

The preamble to the charter states its purpose is “to assert greater control over the actions of County government.” The charter was intended to “confer the greatest power of a local self-government on the people of San Juan County consistent with the State Constitution.” §1.30. However, there were many purposes mentioned in discussions leading up to the charter. These purposes included a desire to:

- Separate executive, legislative, and quasi-judicial responsibilities of the commissioners and to avoid partisan disputes;

¹ Other charter counties and the year the charters were adopted are: King (1969), Whatcom (1979), Clallam (1979), Snohomish (1980), and Pierce (1981).

² Commissioners Darcie Nielsen (D-San Juan Island) and John Evans (R-Orcas) voted in favor of the resolution. Commissioner Rhea Miller (D-Lopez/Shaw) was opposed to the resolution.

³ The freeholders established a website in which they explained their activities and posted minutes of meetings. *See* www.homerulesjc.org.

⁴ Because both the basic charter and the amendment were approved by the voters on the same day, they will be referred to as a single document called “the charter.”

- Provide for a County Administrator who would be available to supervise County business daily;
- Allow two or three members of the Legislative Body to speak with each other on County business without calling a meeting; and
- Adjust the “whole island” districting system in San Juan County to make districts more equal in population and to better follow the principle of “one person - one vote,” and thereby reduce the expense of County-wide elections.

Summary of Changes to County Governance

In the end, the freeholders adopted modest, but fundamental, changes to County government. The charter retains the numerous elected officials that are characteristic of County government, but the charter changed their status from partisan to non-partisan and required that their salary be determined by a salary commission – not the legislative authority.

The greatest change was made to the legislative authority, whose size was increased from three commissioners to six members of a “County Council” and whose administrative duties were transferred to a new position called “County Administrator.” The key provisions of the charter:

- Changed the membership of the legislative authority from three partisan commissioners to six non partisan “council members”;
- Altered district boundaries of Council Members from “whole islands” to combinations of precincts of “nearly equal” population;
- Changed the nomination and election of Council Members from county-wide “at-large” voting to the nomination and election of Council Members “by district”;
- Retained as elected, but changed from partisan to nonpartisan, the offices of County clerk, auditor, treasurer, assessor, and sheriff, and retained the duties of the officers of each of those positions; but the charter made no change to the election or duties of the prosecuting attorney, superior court judges, and district court judge;
- Established the position of County Administrator and required the County Council to assign the duty of carrying out policy and proposing a budget to a County Administrator appointed by and serving “at will” of the Legislative Body; also specifically stated that the Council “shall not interfere in the administration of the executive branch”;
- Required that the compensation for all elected officials be determined by a

citizens' salary commission, instead of by the legislative authority;

- Empowered citizens to propose laws to the people by initiative and to the County Council by “mini-initiative”;
- Empowered citizens by referendum to suspend laws and policies of the County Council pending a vote of the people;
- Required the revision and re-adoption (most by ordinance) of policies and procedures of the County, including those involving public hearings, adoption of ordinances, contracts, personnel rules, purchasing, and information management and record keeping; and
- Eliminated administrative appeals of all hearing examiner decisions.

POWERS OF THE COUNTY

Historical Approach to County Governance

A unique characteristic of county government is the consolidation of the power to enact laws and policy, to oversee the implementation of those laws and policies, and the power to act as quasi-judicial officers in the review of land use and other disputes. Unlike the federal and state government, accountability of county governments was obtained by having numerous elected officials instead of a clear separation of powers. Except for counties that have adopted charters, counties only have such powers as are conferred on them by legislative enactment, or as are necessarily implied from granted powers. 2005 AGO 1, page 2.

This historical approach to San Juan County government was fundamentally altered by the charter. Under the Washington Constitution, upon adoption of a charters the “county shall continue to have all the rights, powers, privileges, and benefits then possessed or thereafter conferred by general law.” Article XI, Section 4. Under the Constitution, all power of a charter county is vested with the legislative authority (except the powers of the prosecuting attorney, superintendent of schools, and judges) unless the powers are expressly vested in another officer as provided in the charter. *Id.*⁵

Home rule charter counties created pursuant to Article 11, Section 4 of the state Constitution have broader powers; their actions are valid as long as they do not contravene any state statutes or constitutional provisions. *King Cy. Council v. Public Disclosure Comm'n*, 93 Wn.2d 559, 562- 63, 611 P.2d 1227 (1980).

In 2003, a Washington Attorney General Opinion summarized the powers of a home rule

⁵ The “general law” regarding powers of county officials is found throughout Article XI of the Constitution and, principally, in Title 36 of the Revised Code of Washington.

county as follows:

The Washington Constitution allows any county to "frame a 'Home Rule' charter" for its own government subject to the Constitution and laws of this state". Const. art. XI, § 4. [FN4] Those counties that have not adopted charters are governed by a statutory framework which is primarily codified in RCW Title 36. With respect to all municipal corporations, the general rule is that they are limited to those powers expressly granted by statute, those powers necessarily or fairly implied in or incident to powers expressly granted, and those powers essential to the declared purposes and objects of the corporation. *Port of Seattle v. Wash. Utils. & Transp. Comm'n*, 92 Wn.2d 789, 794-95, 597 P.2d 383 (1979). "If there is a doubt as to whether the power is granted, it must be denied." *Id.* at 795 (citations omitted).

However, this general rule does not apply to cities and counties that have adopted charters pursuant to the Washington Constitution (Const. Art. XI, §§ 4, 10) or to cities operating under the optional municipal code ("code cities"). RCW 35A.11.020. [FN5] These cities and counties (first class cities, code cities, and charter counties) have legislative powers analogous to those of the state, except they cannot contravene any constitutional provision or state statute. *Winkenwerder v. City of Yakima*, 52 Wn.2d 617, 622, 328 P.2d 873 (1958). These municipalities, often described as having "home rule" powers, do not need express or implied statutory authority to enact local legislation.

Despite their broad powers, the Washington State Supreme Court has held that first class and code cities are not exempt from legislative control:

[A]t least when the interest of the State is paramount to or joint with that of the municipal corporation, the municipal corporation has no power to act absent a delegation from the legislature. *Massie v. Brown*, 84 Wn.2d 490, 492, 527 P.2d 476 (1974) (citations omitted). In addition, a first class or code city's authority is preempted when the Legislature adopts a law concerning a particular interest, unless the Legislature has left room for concurrent jurisdiction. *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 560, 29 P.3d 709 (2001). A city ordinance will be invalid (1) if a

general statute preempts city regulation of the subject or (2) if the ordinance directly conflicts with a statute. *Id.* at 561.

The scope of a municipal corporation's powers also may depend on whether the powers are governmental or proprietary. *Hite v. Pub. Util. Dist. 2*, 112 Wn.2d 456, 459, 772 P.2d 481 (1989). Proprietary powers are more broadly defined than governmental powers. Where a municipal corporation is authorized to conduct a business, it may exercise its business functions in much the same way as a private entity. *City of Tacoma v. Taxpayers of Tacoma*, 108 Wn.2d 679, 694, 743 P.2d 793 (1987). The provision of a product or service to the public--such as water, electricity, natural gas, or telecommunications--is a proprietary, rather than a governmental, function of a city or county. *Id.* at 694.

This means that in determining the power of the county government, it will be necessary to review the constitution, state statutes, and the charter.

The Charter Separates Powers

The charter carefully limited the powers of the Legislative Body by separating the powers into three branches: the Legislative Branch; the Executive Branch; and the Judicial Branch. §1.50. The Legislative Body was restricted to only legislative policy and lawmaking functions. An executive branch was created to be led by a new position of “County Administrator.” The charter does not include details of a judicial branch because the Constitution does not allow the charter to alter the election or duties of state officers, including the prosecuting attorney and judges. §1.50, footnote 1. In addition, the charter reserved to the people the power to make certain laws by initiative and referendum, and the citizens affirmed that they retained the “right and obligation to oversee the functions of government.” §1.50.

THE LEGISLATIVE BRANCH

Name, Number, and Elections of County Council Members

The Legislative Body consists of six members (§2.10) and is called the “County Council.” §2.11. The persons elected to the council are “County Council Members.” §2.11. Annually one member is elected as chair, and another “vice chair.” §2.40. The duties of the chair and vice chair are not mentioned.

Under existing law, the members of the board of county commissioners are nominated at large and are elected at large with a residency requirement in one of three “whole island districts.”

In the 2000 census, District 1 – San Juan Island had a population of 6,844; District 2 – Orcas Island had a population of 4,593, and District 3 – Lopez and Shaw Islands had a population of 2,590. Campaigning county-wide was costly and, in recent elections, candidates raised and spent more than \$40,000 each.

Under the charter, the six council members must “reside within the district from which they are nominated” (§4.20) and are selected in the primary and general election by the voters of the district. §§4.32 and 4.33. Six districts of “nearly equal population” were established using the criteria that the districts should “to the extent practical ... consist of whole islands and nearly contiguous islands.” §4.30(1)(a).

The six districts, based upon established precinct boundaries and the population of each district according to the 2000 census, are set out in the table below:⁶

District Number	District Name	2000 Population
District 1	San Juan South	2,363
District 2	San Juan North	2,542
District 3	Friday Harbor	1,939
District 4	Orcas West	2,530
District 5	Orcas East	2,063
District 6	Lopez - Shaw	2,590

The district boundaries may be changed and the charter requires the County Council to appoint a redistricting committee “commencing with the 2010 census” to determine a districting plan for the County “to be submitted to the Legislative Body for adoption following a public hearing.” §4.34.

The charter provides for staggered, four-year terms, and elections in even-numbered years. §4.31. The charter provides that the Council positions in District 1, District 3 and District 4 shall be elected in one cycle and District 2, District 5, and District 6 shall be elected in the next cycle.

The freeholders examined the wisdom of an even number of Council Members and the

⁶ The freeholders were aware that the district population varied by as many as 651 persons, as set out in this table. However, this variation was considered acceptable and an example of “nearly equal population” given the criteria that whole islands remain in a single district. Moreover, this variation was considered an improvement over the “whole island” commissioner districts that varied by 4,254 people.

impact that would have on the ability of the County Council to conduct business. Though uncommon, a six-member County Council was determined to be the best for the unique situation in San Juan County because it conveniently apportioned districts of nearly equal size. At the same time it prevented the members from any one island from controlling the Council. By establishing rigid quorum and voting requirements, the freeholders intended that one whole island's Council Members could not control the County Council. A majority (four) members of the Council are necessary for a quorum at all meetings, thereby assuring that more than one island's representatives are present at each meeting. §2.40(3) The affirmative vote of four members is required for action, regardless of the number of persons present, which prevents the members of just one island from controlling legislative actions. §2.40(3).

Duties and Powers of the County Council

Section 2.30 of the charter sets out a short, nonexclusive list of typical legislative powers which must be exercised with the formality of an ordinance:

- (A) Levy taxes, appropriate revenue, and adopt budgets for the County;
- (B) Establish the compensation and benefit to be paid to non-elective employees;
- (C) Establish, abolish, combine, and divide by ordinance, non-elective administrative offices and executive departments, and establish the powers and duties of those offices unless limited by the charter;
- (D) Adopt by ordinance comprehensive plans and development regulations;
- (E) Approve contracts or establish by ordinance the method by which any type of contract may be approved.

A more comprehensive list of items which the charter requires be adopted by ordinance will be discussed in another memorandum.

Other powers of the County Council mentioned in the charter include the authority to adopt resolutions to organize and administer the legislative branch, make declarations of policy that do not have the force of law, request information from other agencies of County government, confirm or reject appointments made by the County Administrator for department heads, appoint members of committees and commissions, create a personnel system, and adopt rules of procedure for its own activities.

Although there is no definition of "legislative power" in the charter, the charter includes a specific provision that limits the scope of legislative powers to policy-making through the exercise of legislative acts and not through the administration of the "Executive Branch." The charter specifically states that the County Council "shall not give orders to, or direct, either publicly or privately, any officer or employee subject to the direction and supervision of the County Administrator, Executive Branch, or other elected officials." §2.31

The separation of executive and legislative powers is fundamental to the charter. To

enhance a good working relationship between the County Administrator and County Council, the charter requires that the County Council and County Administrator establish and follow procedures “developed by and agreed upon by the Legislative Body and the County Administrator” that determine the way in which Council Members and their staff will work with other elected department heads, elected officials, and their employees. §2.31(2)

Many other charter governments, including cities, towns, and school districts, have separated the legislative (policy making) activities and the administrative duties. The Washington State Municipal Research & Services Center (MRSC) has published a article of typical legislative and administrative duties and functions to guide other cities and counties. This source should be consulted as the County goes through the process of adjusting to this new approach. See, www.mrsc.org/Subjects/Governance/legislative/policyoradmin.aspx

Legislative Acts by Ordinance

“Legislative acts” are to be undertaken by ordinance. §2.50. The County Council is required to specify the rules for adopting ordinances. §2.41. A new requirement is that ordinances or a summary of ordinances be published before and after enactment. Except in an emergency, an ordinance takes effect 10 “working days” after adoption. §2.50(3). Public hearings may be held on any matter of public concern by the entire County Council or by committee (i.e., with fewer members than a quorum). § 2.30(3) Although not stated in the charter, public hearings on the adoption of an ordinance must occur after a hearing by a quorum. At least 10 days’ notice by publication is required for adopting ordinances. RCW 36.32.120(7).

Work Load and Compensation

Prior to the charter, the commissioners set their own salary and that of other elected officials. In 2005 a commissioner’s salary was approximately \$66,000. The commissioners held regular meetings each Tuesday from 9 a.m. to 4 p.m., and they also held a staff meeting on Monday mornings for one hour. At least monthly (and sometimes more often), the commissioners would hold special meetings on other days of the week to conduct workshops or public hearings or deal with personnel or administrative matters that could not wait until the next meeting session. In addition, the commissioners meet individually with citizens, prepare for meetings, write, phone, travel and attend training for elected officials.

The charter does not specify whether the six Council Members are “part-time” or “full-time” positions. It only states that the Council Members must meet in regular session at least once every two weeks. § 2.41. The freeholders discussed this topic at length and decided that a person elected to the position could determine for himself or herself the amount of time to devote to the position. It is fair to say that a majority of the freeholders anticipate that the County Council positions would be “part time,” though there was no agreement on the specific hours that should be devoted to the job, or the pay for the work.

The charter provides that the salary of the County Council and all other elected officials

will be established by a Citizens' Salary Commission using the procedure called for under RCW 36.17.024. § 10.40(1) and (2). This Citizens' Salary Commission must meet and determine the salary for all elected officials, including the County Council, so that the salary can be fixed prior to the filing period for the 2006 general election.⁷ §10.40, (1) and (2). Because of this timeline, the County auditor and County Council should act to establish the Citizens' Salary Commission as one of the first items of business in 2006.

Under state law, the County Council Members shall receive "a salary for the services required of them by law, or by virtue of their office." RCW 36.17.010. The charter requires compensation for elected officials that is "commensurate with their duties and shall be set by a duly appointed Citizens' Salary Commission." §7.40. The annual salary of the County officers is set out in RCW 36.17.020, and a County Council member in San Juan County must be paid "not less than" \$9,400. RCW 36.17.020(7). In the final analysis, the amount of time County Council Members devote to office will depend upon two factors: (1) the salary to be paid to the County Council as determined by the Citizens' Salary Commission; and (2) the dedication to the job given by persons elected to the position.

THE EXECUTIVE BRANCH

The Executive Branch is divided into two categories of offices: (1) executive offices; and (2) administrative offices.

Executive Offices – "Elected Officials"

"Executive offices" include the County officials of County assessor, County auditor, County clerk, County treasurer, prosecuting attorney, and County sheriff. All of these positions remain as independent elected officials, and their duties are unchanged. Unlike other charters, no positions were consolidated or changed from elective to appointed positions. All of the positions, except the prosecuting attorney, were changed from partisan to nonpartisan offices, leaving the prosecuting attorney as the only County elected official in a partisan office.⁸

Each of these offices is "re-created" by the charter (§ 3.20(2)) with the powers and duties

⁷ Currently, the filing date for the 2006 primary and general election is the fourth week of July. The legislature has discussed moving the primary election to an earlier date, although it is unlikely the change would take effect in 2006.

⁸ This anomaly is required by law because the Washington State Constitution provides that a home rule charter "shall not affect the election of the prosecuting attorney" Article XI, Section 4. Law enforcement officials including the sheriff, prosecutor, and judges should certainly not make discretionary decisions on a partisan basis. The San Juan County Prosecutor, a Democrat, takes a non-partisan approach to the job.

“as in the past,” a reference to the statutes which describe the powers and duties of these various officials. *See* Title 36 RCW. These County officials are also subject to “all personnel, budgeting, expenditure, and other policy of general application recommended by the County Administrator and adopted by the County Council” §3.20(2).

The requirement that County officials abide by general personnel, budgeting and other policies (such as records management, use of technology and computers, office hours etc.) is similar to what is currently done today. Elected officials hire and discipline employees subject to collective bargaining agreements negotiated by the board of county commissioners, follow purchasing and accounting policies established by the commissioners and so on. This provision, however, does not mean that the legislative authority can interfere with the discretionary duties of independently elected County officials. For example, the County Council cannot set policies concerning the investigation, arrest or prosecution of persons accused of crimes. Policies regarding the conduct of elections, the auditing of financial records, or the assessment of the value of property can only be directed by the County Council, if the charter is amended to give that power to the County Council.

Administrative Offices – Department Heads

Under the charter, “Administrative Offices” are the appointed department heads. The charter ends appointments by the Legislative Body and provides that the “head of an administrative department” will be appointed by the County Administrator, and “such appointments by the County Administrator shall be provisional until confirmed by the action of the Legislative Body.” The charter gives the County Administrator guidelines to make the appointment of department heads based upon “the abilities, qualifications, integrity and prior experience concerning the duties of the office to which that shall be appointed.” §3.51.

Currently, the “department head” appointed by the Board of County Commissioners is called the “director” of the following departments: Administrative Services; Washington State Cooperative Extension Agent; Fair Coordinator; Heath and Community Services; Land Bank; Parks; Community Development and Planning; and Public Works.^{9 10} The County Council retains the authority to employ and supervise the personnel necessary to support the County

⁹ RCW 36.80.010 states that “the county legislative authority of each county shall employ a county road engineer.” The county road engineer may be the head of an administrative department when the county road engineer is also the director of public works. In San Juan County, the county road engineer is not the “head of an administrative department.” However, in §4.43, “all executive powers” of the county Legislative Body (whether specified or not) are vested in the County Administrator. Accordingly, the appointment of the county road engineer will also be made by the County Administrator, subject to confirmation by the County Council.

¹⁰ The position of Juvenile Court Administrator is appointed by the Superior Court Judges. This appointment is not affected by the charter.

Council, §2.40(2), and the County Administrator cannot interfere with their choices in that regard.

The County Administrator

The County Administrator is a new position in County government. The County Administrator is the “chief administrative officer.” The County Administrator is appointed by the County Council. § 3.41 (1).

The freeholders debated at length the wisdom of making the County Administrator an elected or appointed position.¹¹ Four of the five charter counties today use an elected “County Executive” to perform the administrative duties of the County. However, the appointed County Administrator is a common method of dividing powers and duties at the county level in other counties throughout the country.

The County Council is required to conduct “a professional search to locate and hire a County Administrator qualified to carry out the duties of the office...” §3.41(2). The County Administrator is to serve under an “at-will” employment contract, and termination shall comply with the terms of the contract. This represents no change in current practice. All department directors of the County serve under “at will” employment contracts that provide for termination at will, and when termination is without cause, current practice provides for severance pay.

The Powers of the County Administrator

The County Council’s power to appoint the administrator is not the same as the power to direct the work of the administrator. The Washington Constitution granted to the citizens the power to limit or “separate” the powers of the County Legislative Body. The charter does this by stating that the County Administrator “shall have all of the executive powers of the County that are not expressly vested in other elected officers by this charter.” §4.43. Under the separation of powers, the County Council guides the administration of the County by adopting policies and procedures of general application, but not by directing specific work or day-to-day activities.

Just as the charter does not define “legislative powers,” the charter does not define “executive power.” The charter does not list specific administrative duties of the County Administrator, but it provides an illustrative list as follows:

¹¹ The freeholders considered an appointed administrator preferable to an elected administrator in this small county. Some of the reasons for this approach are: (1) having a professional-level administrator was considered a priority; (2) it was expected that there would be a small pool of professionally-trained administrators to draw from at the time of an election; and (3) it is uncertain that the most qualified person would win a popular election.

- (A) Manage all administrative offices and functions;
- (B) Ensure all actions of the executive branch are compliant with all federal, Washington State, and San Juan County codes and procedures, and this charter, seeking advice from the County prosecutor or other sources as necessary;
- (C) Insure that all systems, procedures, and use of technology of the departments under the County Administrator’s jurisdiction be periodically reviewed, and that actions be taken to ensure that optimum practices are employed;
- (D) Present to the legislative branch an annual statement of the governmental affairs of the County, and present any other report that the legislative branch may deem necessary;
- (E) Prepare and present to the legislative branch the County’s operating and capital budgets, accompanied by the budget message setting forth proposals for the County during the next fiscal year;
- (F) Assign duties to administrative offices (department heads) and executive departments (elected officials) that are not specifically assigned by this charter or by ordinance;
- (G) Act as the signing authority, on behalf of the County, on all claims, deeds, contracts, and other instruments initiated within the fiscal and budgetary procedures.

§ 3.43.

The County Administrator is responsible for administering the personnel system of the County, consistent with a personnel system adopted by the County Council by ordinance. §7.30. It is the County Council, however, that will supervise its own personnel. §2.40(2).

The County Administrator is required to confirm appointments of “managers” that report to department heads. §3.52. It will be necessary in the personnel rules to better describe the managers’ responsibilities, subject to confirmation by the County Administrator. A functional approach should be taken whereby FLSA-exempt employees (salaried, non-union supervisors) are included in the category of position that is a “manager.” The term “manager” should not include all persons who simply have “manager” in their title, such as non-supervisory “office managers” or persons who are non-union simply because of their confidential status.¹²

Although the charter provides specific guidance for the qualification of department heads, and the authority of the County Administrator to make appointments, the charter omits any mention of specific power of the County Administrator to discipline or remove department

¹² Under the functional approach, the County Administrator will approve the appointment of the following existing positions in the County: Human Resources Manager; Senior Services Manager, Environmental Health Manager, Personal Health Services Manager; Land Use Manager, Building Manager, Long Range Planning Manager, Building and Grounds Manager, Road Operations Manager, and Information Services Manager.

heads. However, the action of disciplining a department head is an executive or administrative function that is granted to the County Administrator pursuant to the general grant of authority in the charter, Section 3.43(1) and (a). Based upon Section 3.43, the only time decisions to discipline or remove a department head is subject to review by the County Council is when the County Administrator is unavailable and an Administrator Pro Tem is handling the work. (Compare §3.60 (3), which provides procedures for removal of department heads during time of service by an Administrator Pro Tem.)

County Administrator Pro Tem

The County Council must also appoint a County Administrator Pro Tem. Unlike a “deputy administrator,” who would be appointed by the administrator, this position is a standing position appointed by the County Council. It is intended that the person serving as Pro Tem will provide continuity of governance in the event the County Administrator is unable to act “in case of absence, temporary disability, resignation, or termination of the County Administrator.” §3.60(2).

The County Administrator Pro Tem does not have the power to appoint or remove department heads. During the service of a Pro Tem, only interim appointments can be made to department-head positions, and removal from the position of department head must be by action of the County Council. §3.60(3).

The position of Administrator Pro Tem is open to “any qualified person other than a sitting member of the Legislative Body.” §3.60(1). The person could have other duties in the County, and could be a department head, a department manager, or a citizen who is qualified. The charter is silent on the compensation to be paid to the Pro Tem. Typically, persons with Pro Tem appointments are only paid during the time they exercise the duties of a Pro Tem appointment.

The first Administrator Pro Tem must be appointed on January 10, 2006. §10.30(2)(a). Unless there is a vacancy, appointments are reviewed and confirmed in the first two months of each odd numbered year. §3.60(1).

Hearing Examiner System

Counties in Washington State have the option of adopting a hearing examiner system to consider quasi-judicial decisions on land use applications. RCW 36.70.970. San Juan County adopted a hearing examiner system in 1994. SJCC Chapter 2.22 and the Unified Development Code make the hearing examiner the decision-maker on most land use permits. *See* County Code Chapter 18.80.

Under the charter, the scope of hearing examiner authority is broad and covers “land and shoreline issues.” In addition, the hearing examiner may conduct hearings on “non-legislative topics” that may be required by the legislative authority by general law or the charter. One

example mentioned by the freeholders was hearings on personnel actions, discipline, or grievances under the collective bargaining agreements.

State law requires the county legislative authority to specify the effect given to decisions of the hearing examiner. RCW 36.70.970(2). Under existing law, except in the case of a rezone, a decision of the hearing examiner may be given the status of a “final decision of a legislative authority,” RCW 36.70.970(2)(c), or it may be given the status of an “administrative decision subject to appeal to the legislative authority. Currently, San Juan County Code specifies that decisions of the hearing examiner are subject to appeal to the Legislative Body.

Under the charter, hearing examiner decisions will be given the effect of final decisions of the legislative authority, unless the County Council has adopted, by ordinance, written procedures for “discretionary review.”¹³ The charter states that hearing examiner decisions “are not subject to administrative review” unless the County Council has adopted, by ordinance, written procedures for discretionary review of hearing examiner decisions. §3.70(4). These procedures must be developed “in consultation with the prosecuting attorney” and must provide that the appellant can bypass administrative review. §3.70(4). These procedures will also provide for the exception for rezones as required by state law.

FINANCIAL ADMINISTRATION

Financial administration of counties in Washington State requires a good deal of cooperation among the auditor, treasurer and board of county commissioners. By statute, the auditor makes a “budget call” to other elected officials and department heads to propose an expenditure plan for the next year. The auditor provides periodic reports and maintains a system of keeping books consistent with the requirements of state law commonly referred to as “the green bars.”

In 2000 the commissioners hired a private accounting firm to re-present the budget information in a different format in an effort to make the budget more understandable. In the past, the commissioners have desired to have their own budget officer, but in the end they have always relied upon the working relationship with the auditor.

The charter does not end the need for a cooperative relationship with the auditor and treasurer, but it does place the responsibility squarely with the County Administrator instead of the County Council. For example, the County auditor retains the duty to make the budget call,

¹³ “Discretionary Review” is a term used by appellate courts to denote a procedure in which the appellate court determines whether to hear an appeal of a lower court’s decision. The considerations governing acceptance of review by appellate courts in Washington State are set out in Rules of Appellate Procedure 2.3(b). The charter requires the County Council to adopt analogous provisions for its review of hearing examiner decisions.

but in §6.20, the information in response to the budget call is to be submitted to the County Administrator. It is the County Administrator who has the duty to formulate the “budget message” and “relate appropriations to the comprehensive plans of the County.” §6.40. The County Administrator is responsible for providing copies of the Budget Message and the proposed budget to the Auditor and County Council and, at the same time, making it available to any citizen.

Prior to adoption of the budget, the County Council must hold a public hearing. §6.60. The County Council retains final budget authority and may increase or decrease any appropriation and “may add provisions restricting the expenditure of certain appropriations; but it shall not change the form of the proposed appropriation ordinances submitted by the County Administrator.” §6.60(2).

The charter authorizes the County Council to continue the practice of establishing a contingency fund and making emergency appropriations in excess of revenues. Supplemental, amended, or emergency ordinances can be proposed by any elected official, but a supplemental capital budget appropriation ordinance cannot be adopted unless a request is made by the County Administrator. §6.73.

Consistent with the past practice of the County auditor, the County Administrator will now submit a written report (balance sheet) to the County Council within six weeks of the end of each quarter. The County Council is authorized to reduce appropriations if expenditures are expected to exceed cash income.

TRANSITION FOR COUNTY LEADERS

The effective date of the charter is January 9, 2006. There is no provision for the transition of powers and duties. There is a transition of officials to assure continuity of governance. To provide for an effective transition, the county officials in office at the time of adoption will continue in the office to which they were elected. The executive offices are “re-created” by the charter. §3.20(2). The members of the Legislative Body are “assigned” new districts to coincide with the boundaries of the districts called out for in the charter. §10.50.

On January 9, 2006, all elected officials should take a new oath of office (§4.40), ensure that a bond secures them appropriately (§4.50), and reappoint deputies, just like they would if they were newly elected to office. In addition, interim appointments of department heads should be made by the County Administrator Pro Tem and presented to the County Council for confirmation.¹⁴

¹⁴ Presently, all department heads work under at-will employment agreements with the board of county commissioners. These contracts are inconsistent with the chapter provisions which vest “all executive powers” in the County Administrator. §3.43. Although an Administrator Pro Tem ordinarily does not make appointments unless the position is vacant, to

Upon the effective date of the charter, the County Council positions for District 2, District 3, and District 5 will be vacant, and the position of County Administrator will be vacant. While the charter transition section calls out specific duties for the appointment of a County Administrator Pro Tem as the first order of business on January 10, 2006, there is no similar provision for the appointment to the vacancies in the County Council.

Section 4.60 of the charter contains a provision for filling vacancies of elected officials (including County Council Members) by appointment of members of the Legislative Body. However, this section does not control if the transition section is “inconsistent.” §10.10. It is evident that the transition section anticipates that the vacant County Council member positions will remain vacant until the selection of candidates in the primary and general elections of 2006.

The transition section states that “three *additional* members of the Legislative Body *shall be elected* in the Primary and General Elections of 2006.” §10.50(2) The word “additional” would be unnecessary if the vacant positions had already been filled by appointment. Moreover, section 10.51 provides that until the Legislative Body consists of six members, the affirmative vote of two (2) is required for the Legislative Body to take action. §10.51. This provision assures continuity of governance until the 2006 general election is certified. Finally, the charter specified that the rate of pay of the “additional” Council Members will be established by the Citizens’ Salary Commission, to take effect after they are elected. *See* §10.40(1) and (2).

Taken together, the transition section provides that the appointment of Council Members to fill vacancies for District 2, District 3, and District 5 be suspended until those positions are first filled by election in the general election of 2006. This interpretation is consistent with the intent of the freeholders as expressed in the minutes of the meeting held on Shaw Island on August 5, 2005 (page 5).

Once the general election is certified, the additional Council Members (in District 2, District 3, and District 5) should “take office upon the certification of the results” as provided in section 4.60(2), rather than wait until the second Monday in January as provided for in section 4.70.

INITIATIVE AND REFERENDUM

It is no surprise that the San Juan County charter grants to the people the power of

carry out the transition in a manner most consistent with the charter, the Administrator Pro Tem should make an interim appointment, subject to confirmation by the County Council. We recommend all existing department heads be reappointed and confirmed by the County Council and that the status quo be maintained until a County Administrator is appointed.

initiative and referendum.¹⁵ Under Washington law, the power of initiative and referendum is not granted to county governments unless the voters choose to retain this power by a home rule charter. Each of the counties that have adopted a charter prior to San Juan County included the power of initiative and referendum. Many cities in Washington State have granted to its citizens the power of initiative and referendum. Accordingly, the procedures for consideration of initiatives at the local level are well established, and the San Juan County charter follows these procedures.

The principle issue that the freeholders debated was the threshold for placing a measure on the ballot. The charter states that once an initiative or referendum petition is reviewed and described by the prosecuting attorney, the petitioner has “120 days to collect the signatures of the registered voters in the County equal to fifteen (15) percent of the votes cast in the County in the last gubernatorial election.”¹⁶

If the required signatures are obtained, then the County Council may adopt the measure, as written, or adopt a substitute measure. In each case, both the Council’s measure and the Citizen’s measure will be placed on the same ballot for approval. § 5.22(6).

Once adopted, an initiative may not be amended or repealed for two years.

If a petition for initiative is unsuccessful in obtaining enough signatures, the measure may be presented to the County Council as a “mini-initiative,” and the County Council must hold a hearing on the measure and take action to enact or reject the ordinance within 60 days. §5.30. A mini-initiative may also be proposed for “any ordinance or amendment to an existing ordinance” by presenting initiative petitions with signatures of three percent (3%) of the votes cast in the last gubernatorial election.

The charter includes three limitations on initiatives. §5.21. First, the charter requires that an initiative be limited to a single “issue.” This is the “one-subject” rule. Second, the charter requires that “no initiative proposal requiring the expenditure of additional funds . . . shall be filed unless provisions are made therein for new or additional sources of revenue.” §5.21. Third, the redistricting of legislative districts shall not be the subject of the initiative process. §5.21(3).

State law contains additional restrictions on the power of initiative. These limitations

¹⁵ An initiative is a legislative proposal by the citizens for direct approval by the voters at an election. A referendum is a request that the effective date of a legislative proposal be suspended until the measure is approved by the voters in an election.

¹⁶ In the 2004 gubernatorial election, 9,859 votes were cast in San Juan County in the race for governor. Fifteen percent creates a requirement for 1,479 signatures for initiative and referendum petitions until the next gubernatorial election in 2008.

were described by the Municipal Research & Services Center in 1994 with respect to cities, as follows:

Basically, the courts have recognized two tests to determine if an ordinance is beyond the scope of direct legislation by the people either through the exercise of the initiative power or the referendum power.

The first test is whether the underlying action is legislative or administrative in nature. If the action is administrative, then it is not subject to the power of initiative or referendum. If it is legislative, then it may be subject to initiative and referendum depending upon the outcome of the second test.

The second test is whether the power is one which has been granted by the legislature to the corporate authority of the city (that is, the city council) or whether it is a power that has been granted to the corporate entity (the electorate) as a whole. If it is a power that has been granted to the corporate or legislative authority (city council), then it is not subject to the powers of initiative and referendum. If it is a power which has been granted to the corporate entity (the electorate), then it may be subject to initiative and referendum.

Both of these powers will be explained in more detail. but it is important to note that the action must pass both of the tests in order to be subject to initiative and referendum. If the action is administrative in nature, or if the subject of the proposed legislation is a power that has been granted by the state legislature to the city council, then it is not subject to the power of initiative and referendum. The citizens may only exercise these powers if the action is legislative in nature and the subject of the legislation is not a power which has been granted to the city council.

These distinctions between legislative and administrative powers were discussed in the review of county powers of initiative and referendum. *Whatcom County v. Brisbane*, 125 Wn.2d.245 (1994). In *Brisbane*, the state supreme court held that the power of referendum did not apply to critical area regulations under the Growth Management Act (GMA), on the ground that GMA lawmaking was delegated to the legislative body. Hence, land use laws are not subject to the power of initiative or referendum. Initiatives may not be conducted on other subjects such as rezones, adoption of personnel rules and internal procedures. When an initiative is proposed on a questionable subject, the prosecuting attorney will start a lawsuit and ask the court to determine whether the subject is allowable. We are confident that there will be more discussion on this topic when specific proposals for initiative or referendum are brought by the citizens.

AMENDMENT OF THE CHARTER

The charter sets out three methods to amend the charter. The principal method to amend the charter is the use of the Charter Review Commission (CRC). The CRC is similar to the Board of Freeholders that proposed the charter. The County Council is required to provide “reasonable funds, facilities, and services appropriate to an elected County agency” and “budget for the expenditures.” §8.22(1).

The charter requires the County Council to “cause an election of a CRC.” §8.20(1). The first CRC election shall be five years after adoption (in November 2010) and every ten years thereafter. The freeholders stated the purpose of the first (five-year) review was to assess the charter after giving it a few years to work through transition issues. Thereafter, review would occur less frequently to provide stability to County governance.

Any proposed amendment submitted by the CRC shall be filed and registered with the County auditor (§8.31) and the County Council (§8.32) and submitted to the voters at the next November general election. *Id.* Alternate provisions may be presented for the choice of the voters. §8.31. If approved by a “majority of the voters,” the charter amendment becomes effective “ten (10) days after the results of the election are certified.” §8.31(3).

The second method to amend the charter is by the power of initiative. §8.33. *Maleng v. King County Corrections Guild*, 150 Wn.2d 325 (2003) directly addressed question of whether county charter could be amended by initiative. While an initiative may amend the charter, it may not repeal it. *Ford v. Logan*, 79 Wn.2d 147 (1971).

The third method to amend the charter is by action of the County Council. That procedure requires the adoption of an ordinance, and then submitting the measure to the public at a general election in November; a procedure allowed by Art. XI Section 4 of the Washington Constitution, *Maleng, supra*.

FROM MUNICIPAL RESEARCH & SERVICES CENTER:

Knowing Your Roles: Resolving and Preventing Conflicts Between Mayors and Councils

It is essential for effective local government that municipal officials, particularly mayors, councilmembers, and city managers, understand the roles of their respective offices and their interrelationships with others. Many of the conflicts in city and town governments, as evidenced by the inquiries MRSC receives, are the result of confusion as to these roles and the consequent overstepping of the boundaries between the respective roles. Although those boundaries may, in some cases, be unclear, there is a basic structure to city and town government, whether of the mayor-council or council-manager form, from which these roles derive.

Though the focus of this article is on the mayor-council form of government, the basic principles apply equally to the council-manager form. There may be some variation in the powers and duties of mayors and councils between classes of cities; you need to be aware of the specific rules applicable to your class of city.

Like the federal and state governments, a city government's powers are distributed among three separate branches: legislative, executive, and judicial. The council is analogous to the state legislature or the Congress; the mayor or manager, like the governor and the President, heads the executive branch; and the municipal court (or the district court by contract) exercises judicial functions, although in a much more limited way than the state or federal courts. Under the "separation of powers doctrine," each of the three branches exercises certain defined powers, free from unreasonable interference by the others; yet all three branches interact with each other as part of a "checks and balances" system. The powers of these branches in city government are defined for the most part by state statute.

The council, being legislative, has the power to enact laws and policies, consistent with state law, regulating local and municipal affairs, usually through the enactment of ordinances and resolutions. In general, the council's authority also includes the specific authority to:

- Enact a city budget.
- Define the powers, functions, and duties of city officers and employees.
- Fix the compensation of officers and employees.
- Establish the working conditions of officers and employees.
- Maintain retirement and pension systems.
- Impose fines and penalties for violation of city ordinances.
- Enter into contracts.
- Regulate the acquisition, sale, ownership, and other disposition of real property.

Provide governmental, recreational, educational, cultural, and social services.
Impose taxes, if not prohibited by state law.
Cause the city to own and operate utilities.
Approve claims against the city.
Grant franchises for the use of public ways.
License, for the purpose of revenue and regulation, most any type of business.
In addition, the council is authorized to enact rules governing its procedures, including for public meetings and hearings.

The mayor is the chief executive and administrative officer of the city in charge of carrying out the policies set by the council and of seeing that local laws are enforced. The mayor, or the manager in the council-manager city, is basically in charge of the day-to-day operation of the city, including the supervision of all appointive officers and employees in the performance of their official functions. The mayor is in charge of hiring and firing all appointive officers and employees, subject, where applicable, to laws regarding civil service. Except for those in towns (fourth class municipalities), councils have some authority to require confirmation of the appointment of certain officials; councils may not, however, require confirmation of firings by the mayor.

In general, the mayor also has the following authority to:

Enforce contracts.
Bring lawsuits, with council approval.
Preside over council meetings and, in some classes of cities, exercise some tie-breaking authority with respect to council votes and veto authority over ordinances.
Call special meetings of the council.
Prepare a proposed budget.
Report to the council on the financial and other affairs and needs of the city.
Perform as ceremonial head of the city.
Approve or disapprove all official bonds and contractor's bonds.
Consistent with the separation of powers doctrine, the council is not authorized to interfere with the mayor's administration of city government. Councilmembers may not give orders to department heads or to other city employees. In council-manager cities, this prohibition is established statutorily; the council must deal with the city manager concerning matters of city administration, except that it may deal directly with officers and employees under the manager's direction "for the purpose of inquiry." To do its job, the council needs information on how the city is operating. The mayor or the manager, either directly or through other city officers or employees, must provide that information and should do so in a timely and useful fashion.

Of course, things do not always run smoothly between the council and the city administration, and the line between policy and administration may in some situations be blurred and imprecise. One area that is a frequent source of conflict is personnel. The council may not like a mayor's appointment to a particular position or it may be dissatisfied with the performance of certain officers or employees. An employee may

complain to, and seek relief from the council about some aspect of employment. On the other hand, the mayor may believe that certain personnel policies interfere with his or her supervision of employees and hiring and firing authority. The mayor may direct that all communications with city staff go through the mayor's office. The council, in response, may feel that the mayor is unlawfully restricting its access to city personnel for information purposes.

The remedy for some of these situations may be to review the respective roles of the mayor and the council and to understand the limitations of their respective authorities. For example, if the council is not happy with a mayoral appointment, there may be nothing the council can do directly within the bounds of its authority. However, if it has the authority to confirm a particular appointment, it can reject the appointee and force the mayor to choose another. If the council does not have confirmation authority, it can express its dissatisfaction to the mayor, but it can do nothing else with respect to that particular appointment. The council may, however, provide for a detailed personnel system establishing specific qualifications for positions, creating affirmative action policies, requiring publication and public posting of job opening announcements, and the like. Moreover, the mayor, at least in code cities, is required by statute to make appointments "on the basis of ability and training or experience."

Similarly, if the council feels that an officer or employee is performing poorly and should be disciplined or fired, it can say so to the mayor, but it has no power to do anything else. Although it controls the salaries paid to city officers and employees, it may not lower a salary so as to cause and with the purpose of causing the person holding that position to quit. A rule to follow is that the council (and the mayor) may not do indirectly what it cannot do directly.

On the issue of communication between the council and city officers and employees, the mayor may not prevent councilmembers from gaining information although he or she could reasonably regulate the inquiry process. If councilmember inquiries of city employees serve to harass those employees or unreasonably take them away from their duties, it may be necessary for the mayor to require those inquiries to be channeled through the mayor's or a department head's office, if that can be done without unduly encumbering council access to information.

Another area that often proves to be fertile ground for germinating conflicts and that may elude easy resolution is that of finances and budgets. For example, the mayor may not take full advantage of the budget authorized by the council. The council may authorize a certain position at a certain salary, and the mayor may decide either not to fill the position or may do so at half time and half salary. The mayor may cite financial exigencies, such as revenues falling short of projections, and may conclude that the city cannot afford someone filling this position full-time. The council, on the other hand, may not agree that the conditions warrant such action or may determine that a different cost-saving measure is appropriate and should be instituted.

Resolution of this type of issue may prove particularly tricky. Although the mayor may not pay an employee less than that authorized by the council in the budget or in a separate salary ordinance, the mayor, under certain financial circumstances, may be able to partially fill a position, proportionately reducing the salary for the position. Legal authority, however, is hazy on such issues. The best strategy would be for the mayor and the council to work out a mutually agreeable accommodation.

There are other issues that will likely arise (and that have arisen in other cities) where it is not clear whether the mayor (or the manager) has the authority to act or whether the council does. In these situations, the council and the city administration could draw their respective battle swords and charge; or, one or both sides could first analyze the issue, perhaps seeking counsel of the city attorney or of the consultants at MRSC.

Understanding roles is a necessary step in resolving many such conflicts. However, when the roles are not clearly defined in a particular situation, compromise may be in order. Statutes and case law may not provide a ready answer. All sides need flexibility to meet the challenges of a functioning and dynamic city government. If the focus is on providing good government rather than on turf wars, councilmembers, mayors, and managers can better fulfill their roles as public servants.