

Minutes – July 11, 2013
Ad Hoc Home Rule Study Committee

The Ad Hoc Home Rule Study Committee held a meeting in the Commission Chambers of the Municipal Building beginning at 7:00 p.m. Members present included: Bill Matthews, Kevin Kearns, Mary Larsen, Nancy Carroll, and Geoff Hurd. Not present were Chris Cahillane and Brad Kitlowksi. Municipal Manager Steve Feller also attended the meeting.

There were no citizen comments.

Geoff Hurd moved and Ms. Larsen seconded to approve the minutes of the May 23, 2013 meeting. The motion passed unanimously.

The Committee members reviewed the attached draft report to the Commission. They discussed various formatting options and agreed that each member would, by August 1, 2013 update the section of the report that they are taking responsibility for. The group will follow the format used by Bill Matthews. Mr. Matthews will also prepare a summary statement indicating how the group was convened, when it met, and the extent of public input during the process.

During the months of August and September Mr. Matthews and Mr. Feller will then review the work of individual committee members and finalize a draft report. The final meeting of the committee will be scheduled for a time in October or November and the final report will be issued to the Commission before the end of the calendar year.

The Committee later decided to hold a final meeting on Monday, December 16, 2013 beginning at 7 p.m.

The meeting adjourned at 8:30 pm

Bill Matthews

Gender Neutrality

The Charter reflects an all too common reliance on the use of male pronouns. While presumed no slight was intended, the Charter represents the entire Community and as such there is no reason to demonstrate any potential bias, in any manner. Further, the Charter should be as inclusive and respectful of the Community as possible.

The committee recommends the Charter be amended to be "gender neutral" in all matters. Below is an example of the use of the male pronoun and how it might be eradicated.

ARTICLE V
MANAGER

Section 501. Appointment, Qualifications and Compensations

The Commission shall appoint a Manager for an indefinite term and shall fix the Manager's his compensation. The Manager shall be appointed solely on the basis of demonstrated his executive and administrative qualifications. The Manager He need not be a resident of the Municipality at the time of his appointment, but may not reside outside the Municipality while in office except with the approval of the Commission.

Section 502. Powers and Duties of the Manager

The Manager shall be the chief administrative officer of the Municipality. The Manager He shall be responsible to the Commission for the administration of all municipal affairs assigned placed in his charge by or under this Charter. The Manager He shall have the following powers and duties:

- 1) To He shall appoint, suspend or remove all municipal employees, except as otherwise provided by law or this Charter and except that department directors shall be hired or discharged with the advice and consent of the Commission. The Manager He may authorize any administrative officer who is subject to his the Manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.
- 2) To He shall direct and supervise the administration of all departments, offices and agencies, except the Treasurer's department and except as otherwise provided by this Charter or by law.
- 3) To He shall make such reports as the Commission may require concerning the operations of municipal departments, offices and agencies subject to the Manager's his direction and supervision.

Brad Kitlowski

I. Public Notice

Various sections of the Home Rule Charter require that the Municipality provide public notice of certain actions and it is required that the notice be given in a “newspaper of general circulation in the Municipality.” It is used with reference to:

- hearings for ordinances requiring notice prior to adoption, including debt ordinances (Section 320);
- post-enactment advertising for ordinances (Section 324);
- budget notices (Section 905);
- capital program notices (Section 911);
- notice of initiative/referendum petition (1206); and
- notice of comprehensive plan (Section 1401).

For example, Section 905 is titled “Adoption of Budget” and it provides that “The Commission shall publish in a newspaper of general circulation in the Municipality the general summary of the budget and a notice” that provides “notice stating: 1) The times when and places where copies of the message and budget are available for inspection by the public, and 2) The place and time, not less than two (2) weeks after such publication, for a public hearing on the budget. . . .”

The Municipality satisfies these public notice requirements by advertising in the Pittsburgh Post-Gazette. The Municipality spends approximately \$18,000 a year to place such advertisements in the Post-Gazette.

We recommend a change to these provisions to use the defined term “Public Notice,” and then include a new section in the charter that defines “Public Notice” as publication by (1) physical posting in a conspicuous location accessible to the public in the Municipal Building (such as on a bulletin board or electronic kiosk in the lobby), and (2) such other methods set forth by the Commission in the Administrative Code. With respect to the Commission-selected methods, the Commission would have the ability to satisfy the notice requirements by putting notice on the Municipality’s website and sending out Lebo Alerts. Given the speed at which technology is currently changing at, this would provide the Commission with flexibility for the notice requirements to keep up with the times. Under the change, in addition to using new methods the Commission could provide notice to the newspaper, instead of purchasing advertisements. The newspaper would then have the option of addressing the relevant information if it so chooses.

Besides the cost, focus should concern the effectiveness of the notice method. Regardless of the method selected, the notice will not reach every single resident. Nonetheless, a goal should be to reach as many as residents as possible while keeping costs down. It is this committee’s belief that use of widely-accepted technology will permit the notice to reach a greater percentage of the Municipality’s residents.

Note that state law requires that certain notices be published in newspaper. The recommended changes to the charter would not affect these requirements.

II. Official Records

Section 325 of the Charter is titled "Recording of Ordinances," and it provides that all ordinances and resolutions are to be entered in permanent record books. We recommend an additional clause to this section that provides that the books (ordinance book and resolution book) "may be kept electronically."

Right now, the ordinance book is kept in the Manager's office, and the only way to review it is to enter the Manager's office. The library used to have a copy, but not anymore. Switching to an official electronic record will allow the Municipality to simplify its record keeping, keep up with the times, and make it easier to make copies and distribute.

III. Public Notice Related to Debt

Section 321 of the Charter is titled "Ordinances Authorizing Indebtedness" and it includes a public notice requirement. Besides requiring newspaper notice (which has already been addressed above), this Section imposes an additional requirement regarding the timing of the notice. Section 321 provides that there must be two public notices: one 15 to 30 days prior to the Commission meeting at which the debt issue ordinance will be raised, and the second 7 to 15 days prior to that Commission meeting.

Pennsylvania state law only requires one such notice, and it must be between 3 and 30 days. Thus, under state law the notice could be as short as 3 days. The way the charter is currently written, the fastest it could happen is 15 days, and there must be two notices, as opposed to one.

Given the current Charter provision, the Municipality has faced issues. It has wanted refinance debt to take advantage of low interest rates but, because of the delay caused by the public notice requirements, the Municipality could not lock-in the rates that it was hoping to obtain.

We recommend changing the timing requirements to require one notice of 7 to 30 days. Such a change would allow the Municipality to approve indebtedness more quickly to avoid the issues it has had with respect to refinancing in the past. Although it affords the public less time to give the Commission input than the current provision, the change is above the state minimum notice of 3 days.

Geoff Hurd

Procedures to Issue Debt

The Issue

Section 321 establishes the required number of Commission votes to authorize debt to be four (4) of the five (5) members. This represents a super majority (80%) of the commission.

The Problem

From a historical perspective – the original wording, may have been placed in the Charter as a reaction to a bond issue for the Recreation Center project. That project was authorized before the adoption of the Charter – at that time a majority vote was required.

The supermajority requirement is an impediment to approval of projects that have the support of a majority of the Commissioners. Other important issues such as taxation, zoning, etc. require only a majority vote.

Recommendation

Revise the wording to state that authorization of new debt requires an affirmative vote of three Commissioners. There could be a delay of the coming into force of this change of three years to insure that all Commissioners are elected to office with the understanding that they will be able to act based on the new voting requirements.

Pros

Let the majority rule, not a minority (observation from a resident at a Community Forum)
Puts this action in line with all other financial decisions – budgeting, taxation, etc.
This change makes this action consistent with the requirement of other governing bodies operate: Federal Constitution, State Constitution, School Board
At the time of any municipal election two Commissioners could be elected that oppose a particular project.

Cons

Sets a higher standard for borrowing which is an action of considerable expense and long lasting ramifications
This has not prevented many worthwhile projects (e.g. the Library renovation, the Public Safety Building, the acquisition of new park land) from proceeding using borrowed funds
Every four years commissioners are elected from three Wards – it is possible that at one election that three Commissioners favoring a proposal requiring new debt could be elected. If the other two Commissioners were opposed then it would take another two years to elect someone who would provide the fourth vote (observation from a resident at a Community Forum)

Mary Larsen

Elected Treasurer

Article IV – Treasurer

The Home Rule Charter currently states that “The Municipality shall have a Treasurer, elected at large and responsible for the collection of all property taxes, earned income taxes, occupational privilege taxes and other general taxes which the Commission may levy. The Treasurer shall be also responsible, as provided in Section 909, for signing all checks for the disbursement of municipal funds. He shall be entitled to complete and accurate information from the Manager or Acting Manager in regard to any check he is asked to sign.”

Committee discussions on whether to recommend the abolition of an elected Treasurer's office as opposed to maintaining the current status weighed preponderantly in favor of eliminating the Treasurer's elected office and adding the duties to the Municipal Manager's office. The chief argument for this change is that the Treasurer's office is ministerial in nature and does not make policy. The Charter vests all policy functions in the Commission. Also, by State mandate in the last two years, the collection of Earned income Tax has been reassigned to Jordan Tax.

A lesser argument is the future possibility for a politically motivated elected Treasurer to decline to act for specious or personal reasons.

We asked ourselves if the change to an appointed (by the Manager) Treasurer would lend itself to good governance and the answer is “yes”.

Kevin Kearns

1st Class Township Limits

As currently written, Section 914 of the Charter fixes the rate of all municipal taxes to those of First Class Townships which, in turn, are determined by the General Assembly in Harrisburg. A principal rationale for adopting a Home Rule Charter in Pennsylvania is for the municipality to establish a prudent degree of self-rule, freeing itself from many of the blanket restrictions imposed by the General Assembly on various classes of municipalities such as Burroughs, Townships of the First Class, Townships of the Second Class, and so on. Section 914 effectively negates this fundamental rationale for adopting a Home Rule Charter and, therefore, substantially reduces the benefits of having such a Charter.

Our committee recommends that the Charter be amended to relieve the Municipality from the tax limits imposed by the General Assembly on First Class Townships. Our reasons for this recommendation are as follows:

- As currently written, Section 914 limits Mount Lebanon's flexibility on Deed Transfer Taxes and Property Taxes.
- With respect to generating revenue – arguably the most important feature of any governing document – Section 914 ties Mount Lebanon to its past (its legacy as a former First Class Township) not its future.
- In Pennsylvania, municipal classifications (Burrough, Township, etc.) are based primarily (exclusively?) on population. Our committee believes that population alone should not be the sole determinant of tax policies. Rather, we the citizens of the municipality should have the right to determine our needs and to tax ourselves accordingly.
- As currently written, Section 914 essentially delegates Mount Lebanon's tax policies to the General Assembly in Harrisburg rather than entrusting we citizens and our elected Commissioners with the autonomy to determine our own future.
- All of the above factors can conceivably prompt our elected officials to circumvent the First Class Township limits with revenue strategies that are lacking in fairness and transparency, such as the imposition of service fees and other mechanisms to generate needed revenue.

Our committee wishes to make ourselves quite clear: We are **NOT** in favor of removing all limits on tax rates in our community. Rather, we wish to place responsibility for those tax rates back in the hands of our citizens and our elected Commissioners where such responsibility rightfully belongs under the rationale of a Home Rule Charter.

Regarding limits on tax increases on real property, Section 914 as currently written ties such increases to the millage rate. We believe a more appropriate, and far more transparent, strategy would be to place a percentage limit on real property tax increases that can be imposed by the Commission. Any increase beyond the agreed upon percentage would require a favorable referendum from the voters of the Municipality. The committee is not prepared to specify exactly what the percentage should be, but we do recommend detaching tax increases from the millage rate, which is antiquated and confusing to most citizens.

Chris Cahillane

LINKAGE OF EARNED INCOME TAX (“EIT”) INCREASE TO CORRESPONDING REAL ESTATE TAX (“RET”) REDUCTION

Section 914 of Mt. Lebanon’s present Home Rule Charter (“HRC”) contains a provision which links any increase of the Township’s EIT to a corresponding reduction in the RET by an amount equal to the revenues estimated to be realized by the EIT increase. Specifically, section 914 states:

Section 914. Tax Rates

Except as provided below, in fixing the rate of any municipal tax which may be now or hereafter authorized by law, the Commission shall abide by the limits established by the General Assembly for first class townships. The Commission may increase the rate of the municipal earned income tax above such limits if the Commission shall in the same year reduce the real property tax rate by an amount estimated to reduce real property tax revenues in an amount equal to the earned income tax revenues estimated to result from such rate increase. Any increase in the real property tax levy of the prior year shall not exceed two (2) mills over the tax levy of the prior year without first obtaining a favorable referendum on the amount exceeding two (2) mills, in the manner set forth in the second paragraph of §1206 of this Charter. The action of the Commission on the ordinance shall follow the majority vote of such election.

See Home Rule Charter of Mt. Lebanon, Pennsylvania, Section 914 (emphasis added). After careful review of the language of this section, and the manner which it has been interpreted and employed by the municipality, the Committee recommends that Section 914 be amended to eliminate this requirement.

While we had no “legislative history” which discusses the purpose of this provision (other than the very good memories of the Township’s capable staff), the Committee believes that this provision was originally envisioned as a mechanism to restrain future increases in the overall tax burden of Mt. Lebanon residents. However, while perhaps well-intentioned, we believe that these restraints are largely ineffectual and improperly removes the power to set tax rates from our elected officials. In addition, it unnecessarily reduces the municipality’s financial flexibility.

In making this recommendation we note that, despite this provision, the Mt. Lebanon Commission has found creative ways “work around” it in the past. In essence, through legislative maneuvering, the Commission has been able to raise the EIT without making a corresponding offset in the RET. This ability to circumvent the provision renders it essentially meaningless. Additionally, consistent with other recommendations of the Committee, we believe that the power to determine tax rates should be decided by the elected commissioners and not dictated by the HRC. Ultimately, the elected Commissioners will be accountable to the voters if their decisions regarding increases (or decreases) in the respective EIT and RET rates are not accepted or approved by the population at large. Lastly, we believe it unnecessarily constrains the municipality’s options in the event additional revenue is needed.

Nancy Carroll

2 Mill Limit

Section 914 of Mt. Lebanon's Home Rule Charter permits an increase in the property tax rate from the previous year of up to 2 mills without the need for voter approval. Any increase above the 2 mills requires a favorable referendum. This provision was adopted in 1977 at a time when Allegheny County assessment policies generated property values that necessitated a much higher millage rate to yield the revenue required to fund government operations. The issue is whether the provision for a 2 mill tax limitation should be updated to reflect the effect of changes in assessment policy.

Prior to 2001, Allegheny County had a predetermined ratio (PDR) of 25%, meaning that property was valued at one-fourth of its market value. Beginning in 2001, the County adopted a PDR of 100% which meant that property was now given an assessed value equal to the full market value. The switch to a 100% PDR also required taxing bodies to reduce their millage rates.

The following illustrates what the change meant for Mt. Lebanon's assessed values and tax rates:

Year	PDR	Market Value	Assessed Value	MTL Millage Rate
2000	25%	\$ 1,413,799,340	\$ 353,449,835	20.30
2001	100%	\$ 1,878,039,596	\$ 1,878,039,596	4.35

What did not change was the provision in the Mt. Lebanon charter that property taxes could be raised by 2 mills without voter approval. Prior to the change in the millage rate, the 2 mill cap limited a property tax increase to about 10% ($2.00 \text{ mills} \div 20.30 \text{ mills} = 9.8\%$). Based on the 2013 millage rate, the 2 mill cap now allows a property tax rate increase of 44% ($2.00 \text{ mills} \div 4.51 \text{ mills} = 44.3\%$) without voter approval.

The committee recommends that language in Section 914 relating to a cap on the millage increase be amended to take into account current property assessment practices and Mt. Lebanon's millage rate. The major alternatives discussed and considered by the committee include:

- linking millage increases to an economic index such as the CPI-U;
- limiting millage increases to an amount equal to a percentage of General Fund revenue (5%, 10%, etc.);
- limiting millage increases to a percentage of current millage rates, 25% for example, to match the change in PDR; or,
- setting a new absolute cap on millage rate increases such as one-half mill.

The committee offers no specific recommendation at this time regarding how the Commission limits tax increases, but does believe the referendum provision for increases above the cap should be retained.