

# County Charter and Freeholders Explained

Kelly Sills, 2013

## Background on County Governance in Washington

The 1889 Washington constitution granted authority to the legislature to establish a “general law” or uniform system of government for all of Washington’s 39 counties. The legislature subsequently established the elected three-member commission (“Board”) form of governance. Commissioners are nominated by district during the primary and elected countywide during a general election.

It should be noted that the Board may be expanded to more than three commissioners as a result of local action through any of three different methods.

1. Through a county charter approved by the voters. There is no limitation as to how many commissioners may be created by county charter, and even the name of the legislative members may change (for example, from commissioner to county councilmember).
2. If the county has more than 300,000 population, by referral from the existing three-member board of commissioners to the electorate, with subsequent approval by the voters. This method can only cause an increase from three to five commissioners.
3. If the county has more than 300,000 population, via petition signed by 10% of the voters (at least 25% of the signatures must come from each of the three commissioner districts), and then approved by the voters. Again, can only increase from three to five commissioners.

In all three cases the proposal to expand the number of commissioners is presented on a ballot to the electorate and is deemed approved by a simple majority vote. Generally, newly created commissioner positions are filled by primary/general election the next year (i.e., the year following voter approval to expand the commission). If election for the new positions is held in an even year, Position 4 is typically elected to a two-year term, while Position 5 is elected to a four-year term. If an odd-numbered year, Position 4 is initially elected to a one-year term and Position 5 is elected to a three-year term. After that, they are usually elected on a regular four-year term cycle.

In a general law county, the Board serves in both executive and legislative capacities. While it has exclusive legislative authority, it shares the executive branch of county government with other countywide elected officials. These include the Assessor, Auditor, Clerk, Prosecuting Attorney, Sheriff, and Treasurer. The state legislature also requires an elected Coroner position for counties under 250,000, but for those above that threshold a Coroner may be replaced by an appointed Medical Examiner, which in fact was the path taken by Clark County.

## Amendment 21 Allowed County Home Rule

In 1948, Washington voters amended Article XI Section 4 of the state constitution to allow for home rule counties. Home rule allows counties to depart from the state-mandated general law structure of governance so long as there are no conflicts with the U.S. constitution, the Washington state constitution, and applicable state laws.

It should be noted that Article XI Section 16 of the state constitution also allows for adoption of consolidated city-county charters in terms that vary somewhat from those set forth in section 4 (via amendment 58 in 1972).

## Freeholders and their Duty

For a county seeking home rule, the constitution requires that a Board of Freeholders (“Freeholders”) must be elected during a general election in order to form a charter to propose to the people. Freeholders do not have a fixed term of office; when their work is done they are out of office.

Freeholder is an old-world term that once referred to ownership of a “clear estate”. This meant a person truly owned a piece of property, free of others, for as long as they wanted and ownership would not revert to anyone else (as opposed to the renting or leasing of property). This status allowed those men (not women) to vote or serve in elected office. However, this old-world meaning has no relevance to county Freeholders in Washington since property ownership is not required to run for office. Rather, Freeholder is just a term that is used, and the only two requirements to be a Freeholder are to be (1) a registered voter and (2) resident in the county for a minimum five-year period preceding the election. There can be as many as 25 Freeholders elected to a Board of Freeholders or as few as 15, and they must equitably represent the county’s population.

Freeholders are unpaid volunteers who have a singular, constitutionally mandated duty: to write the home rule charter and propose it to the countywide electorate. Freeholders are essentially a branch of county government while in existence and so all Freeholder meetings must be noticed and held as an open public meeting. Likewise, Freeholder records are public records.

As a general rule, Freeholders will submit a charter they believe will find favor with voters. It may be a bit optimistic, however, to expect all Freeholders to unanimously agree on every aspect of the charter that is ultimately proposed to the voters. Such was the case in 2002 when Freeholder Carrie Parks refused to sign the proposed charter as a protest against inclusion of referendum and initiative as options for voters. The Board of Freeholders can not only propose a charter to the electorate, but can also submit multiple alternative elements to the charter, in accordance with Article XI Section 4 of the constitution. This is exactly what happened in Clark County when a charter was proposed by Freeholders to the electorate in 2002 with three alternative ballot options.

## A Charter Can Make Changes Large or Small

Despite limitations, there is creative opportunity for change with a county charter. A charter can change a lot about county governance, or it could be as simple as a reiteration of general law. To give a flavor of what may be subject to change, here is a brief list:

- Give county citizens initiative and referendum powers.
- Establish a legislative body with five or more commissioners instead of the current three.
- Make the board of commissioners strictly legislative, passing their current executive functions to an elected (and newly created) county executive position.
- Make changes to elected and/or appointed offices. For example, make elected positions appointed, or appointed positions elected. Both have been done in other counties within the state. The charter could also fix term limits and make elective offices partisan or nonpartisan.
- Requiring county government to adopt a binding code of ethics.
- Create new county positions or departments, such as an Ombudsman to interface with the public, or create a new elected Defense Attorney department.

As much as a charter may change county governance, it has very definite limitations. For example, a charter could not decide how Clark County deals with growth management. The reason is that the growth management act, like many other state statutes, is beyond the reach of a county charter and strictly under state purview. Likewise, a charter cannot change authorities granted by state law to the legislative authority of the county, such as tax rates. A charter also does not have the authority, in the absence of some form of statutory authorization by the state legislature, to impose a countywide business and occupation tax. And it certainly cannot control authorities that are in the hands of other local governments, for example water or sewer rates that are controlled by special districts in the county. These are just a few examples of many such limitations.

### Current Charter Counties in Washington

Currently six of Washington's 39 counties have home rule. All six county charters gave voters the powers of initiative and referendum. The King, Pierce, Snohomish, and Whatcom county charters created the position of county executive. All of the charters switched to electing commissioners/councilors by district (except Whatcom, which maintained one position as at-large). Likewise, all but one of the counties (San Juan) elects commissioners/councilors to partisan positions. Uniquely, The six charter counties currently in existence include (and year of formation):

- King County (1968)
- Clallam County (1976)
- Whatcom County (1978)
- Pierce County (1980)
- Snohomish County (1980)
- San Juan County (2005)

### Some County Charter Efforts Have Failed

Several counties in Washington have tried, but failed, to pass charters that were proposed by a Board of Freeholders. Those counties which have tried but still do not have charters include Cowlitz, Ferry, Island, Kitsap, Skamania, Spokane, Thurston, and of course Clark counties.

In King county the charter succeeded in the wake of a preceding failure. King County's first Board of Freeholders was elected in 1950. They submitted a charter to the general election in 1952 which would have replaced the three-member Board of County Commissioners with a new seven-member County Council and an appointed County Administrator. Many elected county offices would have become appointed positions. The measure failed by a nearly two-to-one margin. It wasn't until a new Board of Freeholders was elected in King County in 1967 that a newly proposed charter was approved during the 1968 general election.

Spokane County went through a home rule campaign in 1997, which failed and cost \$350,000 (according to Clark County Treasurer Doug Lasher). Clark County's neighbor to the east, Skamania County, rejected a home rule charter in 1999. The question on the ballot was, "*Shall Skamania County adopt the 'Home Rule' Charter, to establish its own system of county government subject to the Constitution and laws of the State of Washington, as proposed by the Board of Free Holders?*" The proposed Skamania County charter was more ambitious than most initial charter efforts since it would have shrunk the size of county government, boosted private property rights, and increased local control of zoning, police, and the courts.

There is a contemporary effort in Jefferson County, sponsored by the County Community Rights Coalition, to have election of Freeholders referred to the ballot so they may propose a charter. They will need to obtain approximately 2,500 valid signatures for that effort to be successful.

In Clark County, voters rejected a referendum in 1982 to approve election of Freeholders for a city-county consolidation effort. In 1997, Clark County voters rejected a referendum to approve election of Freeholders for a county charter. In 2000, the Board of Commissioners referred election of Freeholders to the electorate and 21 Freeholders were elected. They formed a charter which was subsequently placed on the 2002 general election ballot with three alternative provisions as follows:

1. Increase board of county commissioners from three to five.
2. Include in the charter the powers of referendum and initiative.
3. Have commissioners elected by district only.

The results of the election were that the charter failed (by 187 votes) and two of the three alternatives likewise failed. The one measure that did pass was election of commissioners by district only, which was approved 58.32% to 41.68%.