

HOME RULE CHARTER ADOPTION OR REVISION
see Home Rule Amendment to the State Constitution (Amendment LXXXIX) and
Massachusetts General Laws, Chapter 43B (The Home Rule Procedures Act)

In summary form, the procedures for adopting or revising home rule charters are described here:

1. Petition Drive: A petition is circulated to determine if there is sufficient interest to warrant placing the question of creating a charter commission on the ballot. The petition must be signed by at least fifteen per cent (15%) of the number of voters registered at the preceding state election. The city/town clerk is directed to supply forms to any registered voter who requests them.

2. File Completed Petition: The completed petition is filed with the board of registrars of voters. The registrars must certify the signatures within ten (10) days of receipt of the petition and report the results to the selectmen or city council.

3. Election Order: If the petition is certified as containing sufficient signatures, the city council or board of selectmen is allowed thirty (30) days after they receive the certification of the registrars to provide for placing the question on the ballot at the next regular city or town election. At least sixty (60) days must elapse between the election order and the election.

If the city council or board of selectmen fails to act within the 30 days they are allowed, the question of creation of a commission and the election of charter commission members shall take place on or after the ninetieth (90) day after the date the petition was originally received.

If the charter has not previously been adopted under this Amendment, the question must be “Shall a commission be elected to frame a charter for the (city) (town) of X?” Many persons have been confused over this requirement. This is particularly true in cities where residents are accustomed to thinking in terms of now having a city charter. These existing “charters” are not to be confused with charters adopted pursuant to the Home Rule Amendment. For reasons too complex to discuss here, the Home Rule Amendment does distinguish between pre-existing charters and those adopted under the Amendment. Therefore, even if the only change that is sought is, for example, to change the term of office for the mayor from two (2) years to four (4) years, the question would nevertheless have to be as set forth here. If a charter has been adopted under the Home Rule Amendment procedure, the question on the ballot would be “to revise”, but you cannot revise until you have first framed (adopted) a charter by this procedure.

4. Nomination of charter commission members: The order placing the question of establishing a charter commission on the ballot must also provide for the election of nine charter commission members. Candidates for the office of charter commission members may have their name placed on the ballot based on the following signature requirements:

Population less than 6,000	10 signatures
6,000 to 11,999	25 signatures
12,000 to 49,999	50 signatures
50,000 to 99,999	100 signatures
100,000 and above	200 signatures

5. Election of the commission: The names of the charter commission candidates are placed on the ballot in alphabetical order (as required by the Home Rule Amendment) preceded by instructions that direct the voter to vote for up to nine (9) persons as charter commission members.

The question of electing a charter commission to adopt or revise a charter is also placed on the ballot. If a majority votes in favor of the question of adopting or revising a charter, the nine (9) candidates receiving the highest number of votes are elected.

6. Charter commission organization: Within ten (10) days of the commission's election, the city or town clerk notifies the nine (9) persons elected to serve as the commission of the initial commission meeting. At the initial meeting, the commission elects a chairman, vice-chairman, and clerk.

The city or town clerk is required to notify the Department of Housing and Community Development of the commission's election. The department is required to notify the commission of the dates for submitting its reports and placing the final report on the municipal election ballot.

7. Funding a charter commission: Within twenty (20) days of the election, the city or town treasurer is required with or without appropriation to credit the charter commission's account with funds based on the following scale:

Population under 12,000	\$ 2,000
12,000 to 49,999	\$ 5,000
50,000 to 99,999	\$ 7,500
100,000 and above	\$10,000

A city or town is also required to provide a charter commission with suitable office space and reasonable access to facilities for holding public hearings, free of charge.

A commission must be permitted to consult with, and obtain advice from, city and town officers and employees during ordinary working hours.

A city or town may contribute clerical or other staff assistance. The city or town may appropriate additional funds for use by the charter commission as is deemed necessary.

A charter commission may accept funds from any private or public source but must report in writing to the city or town clerk the name, address, and any stipulations the donor(s) placed on such contributions.

A charter commission may use funds for: (1) the employment of legal, research, and clerical assistance; (2) reimbursement of expenses incurred by commission members in the performance of their duties; and (3) printing and other necessary expenditures.

8. Public hearings: A charter commission must hold a public hearing within 45 days of its election. The purpose of this initial hearing or set of hearings is to solicit the views, comments, opinions, and proposals from the public for consideration by the charter commission.

The time and place of the initial public hearing and all subsequent public hearings held before a charter commission must be specified in a notice published in a newspaper of general circulation in the community at least ten (10) days prior to each hearing. Hearings may be adjourned and continued at another occasion without further published notice.

9. Preliminary report: Within sixteen* months after its election, the charter commission must prepare and publish a preliminary report. The preliminary report contains the commission's preliminary recommendations including the text of the proposed charter or charter revision and explanatory information that the commission chooses to include.

*(*A community with an annual election can complete the charter process in one year, producing the preliminary report within 8 months of its election and the final report within 10 months).*

The preliminary report must be published in a newspaper of general circulation in the community. The commission must supply the city or town clerk with sufficient copies of the preliminary report in order to enable the clerk to distribute copies to registered voters requesting them.

The charter commission must also deliver two (2) copies of the preliminary report to the attorney general, and two (2) copies to the department of housing and community development.

Within four (4) weeks of its publication, the charter commission is required to hold one or more public hearings on the preliminary report. Notice of the public hearing(s) must be published in a newspaper of general circulation in the community at least ten (10) days prior to the hearing.

10. Opinion of the attorney general: Within four (4) weeks after receipt of the preliminary report, the attorney general is required to furnish the charter commission with a written opinion relative to any provisions in the preliminary report which may be in conflict with the state constitution and the General Laws. The attorney general does not have the authority to approve or disapprove a charter or charter revision; the attorney general provides an opinion.

The charter commission should re-examine those aspects of the preliminary charter proposal that the attorney general has referenced in his opinion as being in conflict with the constitution and the General Laws.

A charter commission must supply the Department of Housing and Community Development with two (2) copies of the commission's preliminary report. The Department of Housing and Community Development has no review authority but serves as a clearinghouse for all home rule charters. These files are open for inspection.

11. Final Report: Within eighteen* (18) months after its election, the charter commission is required to prepare and submit a final report to the city council or board of selectmen. The final commission report, sometimes referred to as the proposed charter, must consist of: (1) the full text of the proposed charter with explanations and other information that the charter commission chooses to include; (2) an explanation of the major differences between the current (if any) and proposed charter; and (3) a minority report (if any) of not more than 1,000 words. *(*A community with an annual election can complete the charter process in one year, producing the preliminary report within 8 months of its election and the final report within 10 months).*

A copy of the charter commission's final report must be sent to the attorney general and the department of housing and community development

12. Final report placed on the ballot: The city council or board of selectmen upon receipt of the final charter commission report must order the charter proposal or charter revisions to appear on the ballot at the next regular municipal election. At least two months must lapse between the election order and the municipal election.

The form of the ballot question would be as follows:

Shall this (city) (town) approve the (insert "new charter recommended by the charter commission" - or - "charter revision recommended by the charter commission") summarized below?"

The summary usually identifies the major elected offices, any new offices created, reorganization of departments or offices, change in terms of office for elected officials, and voter measures such as initiative, referendum, and recall.

The city council or board of selectmen must also see that the final report of the charter commission is printed and distributed to each residence with one or more registered voters at least two (2) weeks prior to the election.

Additional copies of the final report must be provided to the city or town clerk, and made available for distribution to registered voters.

13. Municipal election: If a majority of voters vote in favor of a proposed charter or charter revision, the charter becomes effective on the date specified in the charter. If no date is specified, the charter is effective upon voter approval. The effective date of an amendment may also be specified in the order proposing it.

14. Notification of charter adoption: Four (4) certificates must be prepared and signed by the city or town clerk which set forth any charter that has been adopted or revised and any charter amendments. The certificates must be deposited with the office of the secretary of state, the attorney general, the department of housing and community development, and in the records of the city or town.

B. CHARTER AMENDMENT PROCESS: SUMMARY OF PROCEDURES

1. Amendments proposed by the town meeting or city council: Town meetings and city councils are empowered to propose charter amendments by a two-thirds vote. These legislatively proposed amendments must be voted upon by the residents at the regular city or town election, and if approved by a majority of the voters, take effect.

Amendments may not relate in any way to the composition, mode of election of appointment, or terms of office of the legislative body, and the mayor, or city manager. These changes may be made only through the charter adoption or revision procedure.

2. Petition for suggested amendments:

The citizen right of suggesting charter amendments is as follows:

- The mayor, city manager, or any member of the city council by a written request may place a charter amendment proposal before a city council;
- The town manager or any selectmen of a town by a written request may place a charter amendment proposal before town meeting; in addition, amendments may be proposed in a town on a petition signed by ten registered voters on a form (as provided in c. 43B, s. 15); in a city such petitions shall contain as many names as are needed to nominate a charter commission member (see page 1); in any of the above cases, the request is filed with the city/town clerk.
- Within three months of the filing with the clerk, the city council or board of selectmen shall call a public hearing to be held before it or by a committee established for that purpose.
- Any number of amendment proposals may be heard at the same time. The hearing shall be held within four (4) months of the filing; must be seven (7) days notice of the hearing published in a newspaper of general circulation.
- If the hearing is held by someone other than the city council in a city, such committee must make its report to the city council. In towns, the office or committee conducting the hearing must make its report to the town meeting. In cities, final action must be taken no later than six (6) months after filing. In towns, final action must be taken at the first annual meeting held at least six (6) months after the filing provided that 200 voters or 20 per cent (20%) of the registered voters (whichever is less) may at any time request the selectmen to call a special meeting for the purpose; such meeting must then be held within 45 days of the receipt of the request.

A copy of any proposed amendment approved by the city council or town meeting is immediately to be filed with the attorney general of the commonwealth who within four weeks of such submission must furnish an opinion as to any conflict between the proposal and the state constitution or any state laws. If the attorney general reports no conflict, the order placing the matter on the ballot will then take effect (annual municipal election next following attorney general finding). If the attorney general's opinion is that the proposal does conflict with either the state constitution or laws of the state, the order is suspended and the proposed amendment(s) will not go on the ballot unless the town meeting or city council by a further proceeding so provides.

Amendments to charter previously adopted or revised under this chapter; procedure.

Section 10. (a) Amendments to a city or town charter previously adopted or revised under this chapter may be proposed by the city council of a city or the town meeting of a town by a two thirds vote in the manner provided by this section; provided, that amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and **that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager.** In this section, the word "mayor" shall mean an officer elected by the voters as the chief executive officer of a city or an officer lawfully acting as such, and the term "two thirds vote" shall mean, in cities, a vote, taken by yeas and nays, of two thirds of the members of a city council present and voting thereon, and shall mean, in towns, the vote of two thirds of the voters present and voting at a duly called meeting. (*emphasis supplied*)

(b) In addition to any amendment proposed by a city council or town meeting under subsection (a) the city council or town meeting shall consider and vote upon any suggested charter amendment which it would have the power to propose under subsection (a), and which is not substantially the same as an amendment already considered and voted upon by it within the last twelve months, and which is suggested to it in a written request signed by the mayor or city manager or any member of the city council in a city or by the town manager or any selectman of a town, or is suggested to it by a petition in substantially the form set forth in section fifteen, signed and completed in accordance with the instructions contained therein by at least ten registered voters in the case of a town and by as many registered voters, in the case of a city, as would be required to nominate a charter commission member in such city under section five, which written request or petition shall be filed with the city or town clerk.

At the earliest convenient time not later than three months after the date any suggested amendment is filed with the city or town clerk, the city council or board of selectmen shall order a public hearing to be held thereon before it or before a committee selected or established by it for the purpose, provided that any number of suggested amendments may be considered at the same hearing. Such a hearing shall be held not later than four months after the filing date of any suggested amendment to be considered, and at least seven days notice of such public hearing shall be published in a newspaper of general circulation in the city or town. Except where the hearing is held by a city council, the board or committee holding the public hearing shall report its recommendations to the city council or town meeting, as the case may be. Final action on such a suggested amendment shall be taken not later than six months after such filing date in the case of a city and, in the case of a town, not later than the first annual town meeting held at least six months after such filing date, provided that at any time after the public hearing two hundred registered voters of a town or twenty per cent of the total number of registered voters of such town, whichever is less, may in writing request the selectmen to call a special town meeting to consider the suggested amendment, and the selectmen shall thereupon call such meeting which shall be held not more than forty-five days after the receipt of the request.

(c) Whenever an order proposing a charter amendment to the voters is approved by the mayor and city council or town meeting, a copy of the proposed amendment shall be immediately submitted to the attorney general and to the department of housing and community development

and such order shall not take effect for four weeks after the date of such submission. Within such four weeks the attorney general shall furnish the city council or board of selectmen with a written opinion setting forth any conflict between the proposed amendment and the constitution and laws of the commonwealth. A copy of the opinion shall at the time be furnished to the department of housing and community development. If the attorney general reports that the proposed amendment conflicts with the constitution of laws of the commonwealth, the order proposing such amendment shall not take effect except as may be specified by further proceedings of the mayor and city council or town meeting under subsection (a). If the attorney general reports no such conflict, such order shall become effective four weeks after its submission to the attorney general.

(d) No order or vote under subsection (a), (b) or (c) shall be subject to referendum or shall, except as provided in subsection (a), require the concurrence of the mayor.

(e) The provisions of subsections (a), (b), (c) and (d) shall apply to amendments of laws having the force of a city or town charter by virtue of section nine of Article LXXXIX of the Amendments to the Constitution as well as to amendments of a charter previously adopted or revised under this chapter.

CHARTER AMENDMENT CALENDAR MGL, c. 43B, section 10

File suggested amendment(s) with town clerk: minimum: six months before annual town meeting. (10 registered voters, town manager, selectman)

Schedule public hearing: within 3 months of filing the suggested amendment

Hold public hearing: within 4 months of filing the suggested amendment
Minimum of 7 days prior notice of hearing required

Notes: If a committee other than the Board of Selectmen conducts the hearing, the committee reports its recommendations to the Board. While the statute does not reference a specific time frame for this step, it would be dependent upon the date of the town meeting at which the suggested amendments will be brought to the voters, including notice of this action in the warrant, etc.

Vote of town meeting: within six months of filing AND at an annual town meeting
EXCEPTION: By a petition of two hundred voters or 20% of registered voters (whichever is less) AFTER the public hearing, petitioners can request that a special town meeting be called to consider the suggested amendment. Meeting would need to be held a maximum of 45 days following the acceptance of the petition.

Note: 2/3 vote required (at either annual or special town meeting); the vote is to bring the **proposed** amendment to the voters at the next following annual election.

Review of attorney general for consistency: WITHIN 4 WEEKS OF RECEIPT

Note: Attorney General finds that the proposed amendment is consistent with the laws and constitution of the Commonwealth. This is the "permission" to submit the question to the voters on the next municipal election ballot.

Acceptance of amendments by electorate: ANNUAL MUNICIPAL ELECTION

APPLICATION OF HRA, Section 8 ("special acts") in the charter amendment process.

Section 8 of the Home Rule Amendment, which allows communities to petition the state legislature following town meeting approval, MAY BE USED in lieu of c. 43B, section 10 to amend a home rule charter. Some communities have preferred to enact charter amendments through this route because it is presumed to be quicker; in addition, any change can take effect on the timeline stated in the legislation, and not await ratification by the voters at the next municipal election (as c. 43B, section 10 amendment proposals require).

Please note, however, that a special act of the legislature may also contain a voter ratification provision, and some municipal counsels would argue that if the community is using the special act to make a change **relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager** (for which a charter commission would otherwise be required), that a voter ratification provision should be included in the special act.

The framers of the Home Rule Amendment and C. 43B focused to a great degree on keeping the charter adoption and amendment process at the local level with sufficient state oversight to assure adherence to the law's intent, and to the laws and constitution of the Commonwealth (e.g., review by the Attorney General of proposed charters and proposed amendments). Given the municipal election calendar, the framers' desire to keep local voters aware and informed of changes to the local government organization, the one-year lapse between approval and adoption of charter amendments is the result. Communities need to weight the greater public participation aspects of the Section 10 provisions vs. the lesser emphasis on a local public process of the special act route in choosing how to proceed.

REVISION VS. AMENDMENT:

"..... that only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager. " (excerpt -- MGL, c. 43B, s. 10 [a])

REVISION (examples)

Change manager to mayor

Change mayor to manager

Establish or discontinue specific term for the manager

Increase/decrease term of office of the mayor

Increase authority of town manager (to assume duties assigned to board of selectmen in statute)

Change from open to representative town meeting

Change term of rtm membership

Increase or decrease size of council or representative town meeting

AMENDMENT (examples)

Increase or decrease membership of board other than board of selectmen

Consolidate or reorganize departments or divisions (some statutory prohibitions re: public safety)

Change calendar for budget process

Add requirement for capital improvement plan

Create new committee

Change term of moderator