

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)

Department of Housing and Community Development, 100 Cambridge Street, Boston, MA 02114 (617) 573-1359

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.

***TIME AVAILABLE FOR CHARTER PREPARATION:** It is suggested that a charter commission consult legal counsel with respect to dates for submission of reports. It appears that the term “within” (as appearing in *section 3* of the Home Rule Amendment and *section 9, clauses (b) and (c)* of c. 43B) provides a considerable degree of flexibility for charter commissions that do not need the entire time which is legally available to them under c. 43B. While a commission is not permitted to take a longer period of time, members may decide to take any lesser amount of time as they determine. For example, in those towns which hold annual elections and do not wish to use the 18-month preparation schedule as specified in the Home Rule Amendment (Article LXXXIX) and c. 43B, the commission may prepare the charter proposal within 10 months, and place the report of the charter commission on the ballot at the annual election in the year following the year in which the charter commission was elected.

NOTE: Preparing a proposed charter as a special act (“home rule petition”)

Consult General Court Website, <http://www.mass.gov/legis/drafting.htm> (legislative drafting manual) for specific instructions re: preparation and submission.