



CITY OF NORTHAMPTON, MASSACHUSETTS

OFFICE OF THE CITY SOLICITOR

Janet M. Sheppard, Esq.  
City Solicitor

*City Charter*  
JUL 25 2001

**C O N F I D E N T I A L  
A T T O R N E Y / C L I E N T  
I N F O R M A T I O N**

**M E M O R A N D U M**

**DATE:** July 25, 2001

**TO:** Mayor Mary Clare Higgins

**FROM:** Janet M. Sheppard, Esq., City Solicitor *JMS msg*

**RE:** Charter Reform Questions

**CC:**

I am enclosing a number of items regarding Charter changes.

As I told you, it is my opinion that local approval means approval by the City Council, not an election by the City voters. I am enclosing a copy of the Special Act Charter Methods prepared by the Secretary of State's office which indicates that a city or town may adopt a charter change and that at least two steps are required.

- 1) Local approval (which is approved by the City Council) and State Legislative action. This memo indicates that there is traditionally a third step, which is acceptance by the voters of the city. This is not a required step. There is also a provision in the statute that after the City Council has voted the proposed amendment must be submitted to the Attorney General who has four (4) weeks to file an opinion.

I'm enclosing the following attachments for your review:

- M.G.L. ch. 43B §10 (which was amended in 1998);
- A copy of the memo which I sent to you as councilor on March 19, 1999 without the attachments; and
- The pertinent part of the opinion of Attorney Kathleen Fallon, in pertinent part, procedures for charter change.

A copy of charter section 17 Powers and Duties of City Clerk Generally for your information.

After you have had a chance to review these, it is my understanding that we will meet. If you would like me to distribute these to the other members of the Friday meeting please let Marie know and we will prepare copies.

of State

dures vary with the form of local government. The Elections Division can explain the initiative process for specific situations.

**Legal References:**

- Local approval required: HRA § 8 (1). See Board of Selectmen v. Town Clerk, 370 Mass. 114, 345 N.E. 2d 699 (1976); Belin v. Secretary of the Commonwealth, 362 Mass. 530, 288 N.E. 2d 287 (1972); Brown, Home Rule in Massachusetts: Municipal Freedom and Legislative Control, 58 Mass. L.Q. 29 (1973).
- Nature of local approval: Newell v. Rent Board, 378 Mass. 443, 446-48, 392 N.E. 2d 837, 839-40 (1979); Nugent v. Town of Wellesley, 9 Mass. App. Ct. 202, 205, 400 N.E. 2d 279, 281 (1980).
- Local legislative body: Opinion of the Justices, 375 Mass. 843, 378 N.E. 2d 43 (1978); Opinion of the Justices, 365 Mass. 655, 311 N.E. 2d 44 (1974).
- Local initiative: Marino v. Town Council, 7 Mass. App. Ct. 461, 388 N.E. 2d 334 (1979). See G.L. ch. 43, §§ 37-41, 43-44. See also Opinion of the Justices, 370 Mass. 879, 352 N.E. 2d 678 (1976).

**Legislative Action**

Once a special act charter or charter change has received local approval, it can be filed as a bill by a member of the state legislature.

When filed, the bill will be assigned to a legislative committee for review—usually the Joint Committee on Local Affairs. After a public hearing and a period of study, the committee will report its recommendation on the bill to the legislative body whose member filed it, either the Senate or House of Representatives. If that body approves the bill, it is sent to the other body for consideration. If both houses pass it and it is signed by the Governor (or is passed over his veto by a two-thirds vote of each house), it becomes law.

**Final Acceptance by Local Voters**

The special act sometimes provides that it will not go into effect until the local voters, in response to a question on an election ballot, have voted to accept it. (This local acceptance is not constitutionally required.)

The city solicitor or town counsel must prepare a fair, concise summary of the act. This summary appears on the ballot unless the special act provides otherwise.

If the local acceptance step is not done, then the charter or special act or amendment will take effect either on the thirtieth day after it is signed or on an effective date specified in the legislation.

**Legal References:**

- Legislative procedure: Joint Rule 7B.
- Effective date: G.L. ch. 4, § 1.
- Acceptance not required: Newell v. Rent Board, 378 Mass. 443, 447 n.6, 392 N.E. 2d 837, 839 n.6 (1979); Nugent v. Town of Wellesley, 9 Mass. App. Ct. 202, 204, 400 N.E. 2d 279, 280 (1980).
- Summary of Special Act: M.G.L. ch. 54 section 58A.

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d within the city or town a least ten days prior to the

hearing in a newspaper having general circulation in the city or town, but hearings may be adjourned from time to time without further published notice.

Amended by St.1998, c. 161, § 283.

Historical and Statutory Notes

1998 Legislation

St.1998, c. 161, § 283, an emergency act, ap- proved July 2, 1998, the corrections bill, twice

substituted "housing and community development" for "community affairs".

Library References

Texts and Treatises

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 126, 127.

13A Am Jur Legal Forms 2d, Municipal Corpora- tions, Counties and Other Political Subdivi- sions §§ 180:11 et seq.

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

(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.

(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.

Amended by St.1998, c. 161, § 284.

**Historical and Statutory Notes**

**1998 Legislation**

St.1998, c. 161, § 284, an emergency act, approved July 2, 1998, the corrections bill, twice

substituted "housing and community development" for "community affairs".

**Library References**

**Texts and Treatises**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 126, 127.

13A Am Jur Legal Forms 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 180:11 et seq.

**§ 11. Proposed charter or charter revision; submission to voters; ballot; copies of final report or proposed amendment; adoption of alternative or conflicting provisions**

**American Law Reports**

Doctrine of de facto existence of powers of municipal corporation as applicable to amendment or revision of charter. 7 ALR2d 1407.

**Library References**

**Texts and Treatises**

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 126, 127.

13A Am Jur Legal Forms 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 180:11 et seq.

**§ 12. Charter and charter amendments and revisions; deposit of certificates; judicial notice; reprints for distribution**

Certificates in quadruplicate shall be prepared setting forth any charter that has been adopted or revised and any charter amendments approved and shall be signed by the city or town clerk. One such certificate shall be deposited in the office of the state secretary and shall be kept under the custody of the archivist of the commonwealth, one shall be deposited in the office of the director of housing and community development, one shall be deposited in the office of the attorney general and the other shall be recorded in the records of the city or town and deposited in its archives. All courts may take judicial notice of charters and charter amendments of cities and towns.

The city council of each city shall not greater than ten years be reprinted for distribution at the office of the city clerk. The charter may be referred to being set forth at length the cost of paper, printing a clerk.

Amended by St.1998, c. 161, § 284.

**1998 Legislation**

St.1998, c. 161, § 285, approved July 2, 1998, the corrections bill, twice

**Texts and Treatises**

56 Am Jur 2d, Municipal Corporations and Other Political Subdivisions §§ 126, 127.

**§ 12A. Resubmission**

**Texts and Treatises**

56 Am Jur 2d, Municipal Corporations and Other Political Subdivisions §§ 126, 127.

**§ 13. Exercise of power**

Power to limit weight of respect to use of streets or sidewalks. 401.

Validity, construction, arguments relating to requirements.

**Texts and Treatises**

56 Am Jur 2d, Municipal Corporations and Other Political Subdivisions §§ 126, 127.

**1. In general**

Municipal action, when Home Rule Amendment and Home Rule Amendment Act as inconsistent. Conn (1999) 714 N.E.2d 335, 430, 761.

**2. Validity of ordinances**

Mayor's executive order. Insurance benefits to register.

**§ 16. Paper or documents**

Any paper or document filed with the city or town clerk or

## **Section 17 - Powers and Duties of City Clerk Generally**

The City Clerk shall also be Clerk of the Board of Aldermen, and of the City Council when in convention, and shall be sworn to the faithful performance of his duties. He shall perform such duties as shall be prescribed by the Board of Aldermen, and he shall perform all the duties and exercise all the powers incumbent by law upon him. He shall deliver to his successor in office, as soon as chosen and qualified, all the records, journals, documents, papers and property held by him in his said capacity. In case of the temporary absence of the City Clerk, the Mayor, by and with the advice and consent of the Board of Aldermen, may appoint a City Clerk pro tempore.

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**C O N F I D E N T I A L - L E G A L   A D V I C E**  
**N O T   F O R   P U B L I C   R E C O R D**

**M E M O R A N D U M**

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**DATE:**     March 19, 1999  
**TO:**        Councilors Mary Clare Higgins and Marianne LaBarge  
**FROM:**     Janet M. Sheppard, Esq., City Solicitor  
**RE:**        Charter Reform  
**CC:**

There are two ways to initiate charter reform according to chapter 43B of the M.G.L. which is the statute governing Home Rule features. There are two procedures for amending an existing charter. The first is outlined in M.G.L. c. 43B §2 which states that "every city and town shall have the power to adopt or revise its charter or to amend its existing charter in accordance with procedures prescribed by this chapter". M.G.L. c. 43B §3 sets out the number of persons who need to sign and that is "at least fifteen per cent of the number of registered voters residing in said city or town at the preceding state election".

I am going to outline the procedures under the adoption or revision of a charter under §3.

1. 15% of the registered voters of the preceding state election must sign a petition and have it certified by the city clerk. Within thirty days of certification that there are enough signatures, the City Council shall make an order for submitting the question of adopting or revising a charter to the voters of the city. The Order also, at that time, should provide for the nomination of charter commission members at said election. The election shall be at the first regular city election held on or after the sixtieth day following the adoption of the City Council Order.
2. M.G.L. c. 43B §5 provides that charter commission members must obtain "fifty signatures if there are twelve thousand or less than fifty thousand inhabitants" which is the case in Northampton. These must be submitted 28 days preceding the day of election. These nomination papers are governed by the same rules as regular elections which is the Order of registrars in accordance with §7 of c. 53.
3. A charter commission shall consist of nine registered voters of the city, elected by the official ballot and if a majority vote is cast by the general elector to adopt or revise the

charter than the nine candidates receiving the highest number of votes shall be declared elected.

4. §8 outlines the charter commission rules and regulations, personnel. They must have a suitable office and clerical assistance.

The second way to change a charter is the procedure under M.G.L. c. 43B §19 which requires an act of the state legislature. The process is as follows:

1. Local approval by the City Council of the section of the charter to be amended.
2. Then the amended section is sent to the state legislature as a special act.
3. Final approval by the electorate of the City of Northampton would take place after this special law is passed by the state legislature. According to Lauren Goldberg whom I spoke to, it is not necessary for the registered voters of the City of Northampton to approve this, however, on many of the charter changes before we have put into the general law the specific requests that this be approved by the voters.
  - a. There is a difference of opinion among people who have interpreted the home rule amendment as to whether or not the constitution requires a charter change to be approved by the people. If we decide to go this route I would do a more in-depth analysis of the statute and the case law.

I'm enclosing also article 12 chapter 389 of the Acts of 1961 which establishes the Board of Public Works and which was a charter change which was approved by the legislature on April 20, 1961 and accepted by the voters of the City of Northampton on November 7, 1961.



AVAILABLE PROCEDURES FOR CHARTER CHANGE

*From  
Cathy Fallon*

1. REVISE CURRENT CHARTER BY SPECIAL ACT OF THE LEGISLATURE

- A. Revision by means of a special act does not require the election of Charter Commission. The ad hoc committee or a committee of the City Council could draw up the special act.
- B. The submission of a proposed special act to the General Court would require the approval of 2/3 of the City Council and the Mayor.
- C. A proposed special act may include a provision that it be submitted to the voters for approval but need not do so. If submission to the voters is not included in the proposed act approved by the Council and Mayor, the General Court may add such a provision.
- D. A special act cannot alter provisions of the current Charter which deal with the composition, mode of election, or term of the legislative body (City Council) or Mayor.

2. CREATION OF NEW CHARTER OR SUBSTANTIAL REVISION OF OLD CHARTER UNDER THE HOME RULE AMENDMENT (M.G.L. CHAPTER 43B).

- A. The process is initiated by filing a petition with the City Clerk requesting revision of an old charter or the adoption of a new charter and the election of a charter commission. The petition must be signed by 15% of the City's registered voters.
- B. Within thirty (30) days of receipt of certification of the signatures on the petition, the City Council shall adopt an order placing the question of revising/adopting a charter and election of a charter commission on the ballot at the next regular city election which is held on or after the sixtieth day following adoption of the order. If the City Council fails to adopt such an order within thirty (30) days, said question shall be placed on the ballot at the next regular city election held on or after the ninetieth day after receipt of certification of signatures by the City Council. The Mayor's approval is not required to place the question on the ballot.

A person may have his/her name placed on the ballot as a candidate for the charter commission by filing nomination papers signed by fifty (50) registered voters with the City Clerk. A person must be a registered voter to serve on the charter commission.

- C. If the question to revise/adopt the charter is approved by the voters, then a charter commission of nine (9) members shall be elected at the same election. The nine (9) candidates on the ballot with the highest votes are elected to the charter commission.
- D. The charter commission shall hold a public hearing on the issue within forty five (45) days of its election and submit a preliminary report, including the text of any proposed charter, within sixteen (16) months of its election.
- E. The charter commission shall submit a final report to City Council within eighteen (18) months of its election.
- F. The proposed new charter or amendments to the existing charter shall be placed on the ballot at the next regular municipal election held at least two (2) months after submission of the final report.

3. ACCEPT STATUTORY PLAN CHARTER UNDER M.G.L. CHAPTER 43

- A. The Mayor and City Council may approve the submission of a special act granting authority to adopt a Plan charter in accordance with M.G.L. Chapter 43. Any special act adopting a Chapter 43 Plan charter must include a provision that the issue be submitted to the voters for approval.
- B. Acceptance of a Chapter 43 Plan charter may be proposed by an initiative petition to the City Council signed by 10% of the City's registered voters. Upon certification of the signatures on such a petition, there shall be an eighty (80) day appeal period during which the sufficiency or legitimacy of the signatures may be challenged. If there is no challenge, within ten (10) days of the expiration of the appeal period, or, if there is a challenge, within ten (10) days of its resolution, the City Council shall transmit the petition to the City Clerk for inclusion of the question of adoption of a Chapter 43 Plan charter on the ballot at the next regular municipal election to be held at least thirty (30) days after said transmittal. (Adoption of a Plan F charter only may be placed on the ballot for a state election.)
- C. Acceptance of a Chapter 43 Plan does not require the election of a charter commission. Only one Plan may be placed before the voters for adoption at any one election.