

TO: Honorable Mayor and City Council

FROM: City Administrator Ron Johnson

SUBJECT: Charter Commission Discussion

DATE: June 7, 2017

BACKGROUND

Discussion took place at the May 16 City Council meeting regarding the potential reestablishment of a Charter Commission. Staff was asked to conduct additional research for further discussion.

City Attorney Roger Knutson earlier mentioned that the procedure is as follows: City Council recommends to the Chief Judge of the district court a list of recommended people to be appointed and provides the court a proposed order. City Council members can be on the charter commission.

In addition, staff contacted the League of MN Cities (LMC) for information. The LMC has a Charter Assistance Program available to help provide guidance to home rule charter cities. I shared the video stream of the May 16 Council discussion regarding the Charter Commission with LMC Codification & Research Staff Attorney Amber Eisenschenk. She informed me that *"The Charter Commission is an ongoing body and is required by statute to meet at least annually. (Your city is certainly not the only one ignoring this requirement.) My recommendation would be to have the council make recommendations for appointment to the chief judge to fill the commission."*

Attorney Eisenschenk continued *"For background on this process, the League's Handbook Chapter on charter cities is available here:*

<http://www.lmc.org/media/document/1/thehomerulechartercity.pdf?inline=true>

Based on council's discussion, I'd recommend sharing this with your council so they understand the requirements of a charter commission and the process by how a charter can be amended. This chapter is pretty brief but is a great overview for charter cities. The charter could be amended to specify the number of charter commissioners and their qualifications. Until there is an active Charter Commission this would take a vote at the general election."

I am attaching the document for your information and continued discussion. There is likely more information than you need, but it may answer questions you may have.

REQUESTED COUNCIL ACTION

Continue discussion on potential reestablishment of a Charter Commission

Attachment(s): LMC Handbook for MN Cities Chapter 4- The Home Rule Charter City



HANDBOOK FOR MINNESOTA CITIES

**Chapter 4
The Home Rule Charter City**

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HANDBOOK FOR MINNESOTA CITIES

Chapter 4 The Home Rule Charter City

Understand the authority to form a home rule charter city, charter city powers and the ways it may be organized. Contrast charter cities to those operating under the statutory city code. These broad categories are the two basic types of city organization available in Minnesota.

RELEVANT LINKS:

[Minn. Const. art. XII, § 4.](#)
[Minn. Stat. ch. 410.](#)

See Part VIII – *Conflicts with state law.*

[Minn. Stat. ch. 412.](#)

See Part IV – *The charter commission.*
[Minn. Stat. § 410.33.](#)
[Minn. Stat. ch. 412.](#)

I. Home rule in Minnesota

The Minnesota Constitution permits the Legislature to establish home rule charter cities, counties, and other units of local government. State statutes enacted under this constitutional authority authorize cities to adopt home rule charters. Any city may adopt a home rule charter. Of the 853 cities in the state, 107 are currently operating under a voter-approved home rule charter.

Home rule charter cities can exercise any powers in their locally adopted charters as long as they do not conflict with state laws. Conversely, charter provisions can specifically restrict the powers of a city. As a result, voters in home rule cities have more control over their city's powers.

II. Distinction between home rule charter and statutory cities

The major difference between home rule cities and statutory cities in Minnesota is the kind of enabling legislation from which they gain their authority. Statutory cities derive their powers from Chapter 412 of Minnesota Statutes, commonly known as the statutory city code ("city code"). Home rule cities obtain their powers from a home rule charter. The distinction between home rule cities and statutory cities is one of organization and powers, not differences in population, size, location, or other physical features.

Despite this distinction, home rule charter cities are often interested in the statutory city code. For example, a charter commission will often review Chapter 412 when drafting amendments to the charter. In addition, when a charter is silent on a matter addressed in the statutory city code (or other general law), the home rule charter city can generally use that statutory authority as well.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

Minn. Stat. § 410.16.
Handbook, *Local
Government in Minnesota.*

Statutory cities are sometimes interested in home rule charters themselves. This may occur when problems arise that cannot be solved under the statutory city code. When a statutory city finds itself in such a situation, it can either request that the Legislature change the city code (or adopt a special law for that specific city), or it can become a home rule city with a charter provision that provides the necessary authority.

III. The home rule charter

Home rule charters are, in effect, local constitutions. State laws give cities a wide range of discretion to draft charters that will meet the specific needs of the community.

A. Forms of city organization

The charter may provide for any form of municipal government that is consistent with state laws that apply uniformly to all cities in Minnesota. Home rule charter cities in Minnesota have operated under the following four forms of city government. An individual charter may, however, alter some of these features.

1. Weak mayor-council

The weak mayor-council plan is the most predominant form of city organization and is used by 74* of the 107 home rule charter cities. Under this plan, administrative and legislative authority is the council's ultimate responsibility. The powers of the mayor are generally no greater (or less) than those of any other member of the council. No individual councilmember holds any specific administrative powers.

2. Strong mayor-council

The strong mayor-council plan is not very common in Minnesota. This plan is used by only three* home rule charter cities: St. Paul, Duluth, and St. Cloud. Under this plan, the mayor is responsible to the council for the operation of all administrative agencies. Under the usual strong mayor-council plan, the mayor can generally appoint and remove subordinates, is not a councilmember but can veto council legislation, and prepares and administers a budget that is subject to council approval. The chief functions of the council are to legislate and set policies.

*Northfield is sometimes classified as a strong mayor-council city. While its mayor is provided some additional authority under the Northfield City Charter, Northfield does not operate under the typical strong mayor-council form of city government.

RELEVANT LINKS:

[LMC Charter Assistance Program.](#)

See Part V-C – *Amendments.*

Handbook, *The Home Rule Charter City.*

See Part VII – *Charter subjects and provisions.*

3. Council-manager

Under the council-manager form of government, the council has policy-making and legislative authority, but the administration is the responsibility of an appointed manager who answers directly to the council. Thirty Minnesota home rule cities use the council-manager plan.

4. Commission

Under the commission form of government, each elected councilmember is responsible for a particular administrative department. So, in addition to having duties as a legislative official, the councilmember is also a department head. The commission form has never been very popular. Over the years, it was used by only a few home rule cities. Today, no Minnesota city is operating under a commission.

B. Advantages of a home rule charter

The home rule charter type of city government has advantages and disadvantages. Some of the advantages of home rule include:

- One of the principle virtues of the home rule charter is that it allows each city to tailor its charter to its own individual needs and desires (cities are encouraged to contact the League of Minnesota Cities Charter Assistance Program for model and sample charters, research memos, and advice that will assist in drafting, amending, or adopting a charter). City residents draft, adopt, and amend the city's charter.
- A home rule city, unlike a statutory city, has the power to make changes to fit its own needs by amending its charter. These changes can occur locally, rather than waiting (and hoping) for a new law to be passed when the Legislature is in session.
- The home rule process educates the voters of the city. Some work on charter commissions, while others will learn about the charter and any amendments when they vote on proposed changes.
- A city charter may cover many functions and procedures, or it may be very similar to the statutory form of city government.
- If general state laws are silent on a specific subject, local citizens may address them in their city's charter.
- A charter may provide for initiative and referendum, recall, and election of councilmembers by wards.
- City charters sometimes include limitations that are more stringent than those in the general state laws. For example, a few home rule charters contain tax and debt limitations.
- The cost of government under a city charter need not be greater or less than the cost of the statutory city form of government.

RELEVANT LINKS:

[National Civic League
Model City Charter, Eighth
Edition \(2003\).](#)

C. Disadvantages of a home rule charter

A home rule charter also has its disadvantages. Some of these can include:

- While the cost of preparing a home rule charter should be relatively minor, the smaller the community, the larger the cost in proportion to population.
- Poor charter drafting can be a problem. A charter city can minimize these concerns by relying on model charters and consulting competent professional advice.
- The process for amending a charter is often time-consuming and cumbersome.
- Charter amendments can be difficult to pass (particularly when the subject matter is controversial). Sometimes, city advocates will go directly to the Legislature for a solution, in order to bypass local opposition or to avoid dividing the community. This tends to defeat the original purpose of home rule: local control.
- If the city charter provides for special elections, election expenses may be overly burdensome to city budgets.
- Anyone looking for the applicable law relating to a home rule charter city must consult not only the state statutes, but the particular home rule charter. Only a few collections of the home rule charters exist. An up-to-date copy of a city charter is of utmost importance to ensure the advice is accurate.
- The experiences of other cities may be of little help to a home rule charter city. For example, when the Supreme Court or the attorney general gives a ruling that concerns a statutory city, that opinion will, in most instances, be equally applicable to all other statutory cities in the state. Rulings affecting a home rule charter may, however, only be relevant to those cities that have very similar charter provisions.
- The procedure for abandoning the charter form of city government may be similarly complicated.

D. Essentials of a good home rule charter

Effective charters maximize the advantages while minimizing the potential disadvantages. In addition, a good home rule charter will also address the following:

1. Comprehensive grant of power

The most essential element of a good charter is a comprehensive grant of power that allows the city to exercise all powers legally available under state law and the state constitution.

RELEVANT LINKS:

Because cities are organized to promote the welfare of the people, and city residents are in control through their elected representatives and charter commission members, citizens should not be afraid of entrusting their city government with a wide range of powers. If the citizens feel it necessary, the charter can include initiative, referendum, and possibly recall provisions as additional checks to prevent the abuse of power.

2. Simplicity and brevity

Simplicity and brevity are also essential to a good charter. Provisions should be simple and clear, avoiding the possibility of more than one interpretation. A charter should also be brief enough to be read in a reasonable amount of time.

3. Governance fundamentals

Because of the difficulty in amending and abandoning a home rule charter, the charter should only deal with governance fundamentals and give the city council the authority to provide more detailed regulations through city ordinances.

4. Responsive organization

A good city charter provides for a workable, responsive governmental organization. Its design should eliminate unnecessary “red tape” and makes city government more effective by reducing the number of working parts.

5. Centralize administration

Whenever possible, the charter should centralize responsibility for administration in one person: a chief administrative officer. This encourages and rewards expertise and efficiency in the administration of the city.

6. Representative democracy

A charter should emphasize representative democracy. A city should limit the number of elective offices so voters will be able to intelligently cast their ballots. The charter should never ask voters to elect non-policy-making administrative officers. The city should have only a single body elected by voters to legislate and determine policies for the city. This single legislative body, the city council, should be composed of between five and nine members. Councilmember terms should be long enough (up to four years) to gain experience. State law mandates that most council terms be four years, although a two-year mayoral term is allowed.

RELEVANT LINKS:

[Minn. Stat. § 410.05, subd. 1.](#)

[Minnesota District Courts.](#)

[Minn. Stat. § 410.05, subd. 5.](#)

[See Section IV-D –
Dissolution.](#)

[Minn. Stat. § 410.05, subd. 1.](#)

[Minn. Stat. § 410.05, subd. 1.](#)

[Handbook, *Election
Procedures.*](#)

7. Advisory boards

All advisory boards should report directly to the city council.

IV. The charter commission

A. Creation

Every home rule charter begins with the appointment of a charter commission by the state district court. There are three ways a city’s charter commission may be created:

- First, the chief judge of the district court in which the city lies may appoint a charter commission if it is deemed to be in the best interest of the city. The court will probably not do this without local interest in the matter.
- Second, the court must make the appointment if it receives a petition signed by voters who constitute at least 10 percent of the number of voters who voted at the last city election. Smaller cities may find it easier to get the necessary number of signatures.
- Third, the city council may, by resolution, request the district court appoint a charter commission.

Once appointed, a charter commission becomes a continuing body. Its membership will change from time to time, but the commission goes on indefinitely until it is formally dissolved using statutory procedures. Mere failure of the body to meet, to propose a successful charter for election, or to function does not end its existence.

B. Commission members

Charter commissions must have between seven and 15 members. The court will determine its size, unless a petition of the voters or resolution of the city council specifies the size of the commission. Any city with a home rule charter may amend the charter to fix the size of the commission to be between seven and 15 members.

1. Appointment

The district court usually makes charter commission appointments. The only statutory qualification for members of charter commissions is that they be qualified voters of the city. Commission members may hold some other public office or employment except for a judicial office. City councilmembers may serve on charter commissions.

RELEVANT LINKS:

[Minn. Stat. § 410.05, subd. 3.](#)

However, the city’s charter may provide that members of the governing body cannot serve on the charter commission. Charter commission members may serve unlimited successive terms.

[Minn. Stat. § 410.05, subd. 2.](#)

The court may receive information from interested citizens concerning these appointments. A city council, the petitioners requesting appointment of a commission or, in the case of new appointments to an existing commission, the charter commission itself, may suggest names of eligible nominees to the district court for consideration.

[Minn. Stat. § 410.05, subd. 2.](#)

The court, acting through the chief judge, makes the charter commission appointments by filing an order with the district court clerk. The district court clerk then notifies the appointees, who have 30 days to file their written acceptances and oaths of office with the district court clerk.

Appointments are for staggered (or overlapping) four-year terms. Of the initial appointments, half the members plus one will serve two-year terms, with the remainder serving full four-year terms. Thereafter, the chief judge appoints new members every two years.

2. Vacancies

[Minn. Stat. § 410.05, subd. 2.](#)

The commission will experience vacancies due to various reasons, such as death, inability to perform duties, resignation (including failure to file the acceptance and oath of office), or based on moving out of the corporate limits of the city. The district court may remove members from the commission at any time by written order. The order must show the reason for removal. If any member fails to perform the prescribed duties and fails to attend four consecutive meetings of the commission without satisfactory explanation, a majority of the members may sign a request for the member’s removal and the court must order the removal.

[Minn. Stat. § 410.05, subd. 2.](#)

The commission should always contain its full complement of members. When a vacancy occurs, the chief judge has 30 days to make an appointment. If the judge fails to make an appointment, the governing body of the city may appoint the new members, unless the chief judge indicates (in writing to the governing body) within the 30-day period of his or her intention to make the appointments. In this case, the judge has an additional 60 days to make the appointment.

C. Purpose and functions

[Minn. Stat. § 410.07.](#)

The primary concern of a new charter commission in a statutory city is discussing and drafting a home rule charter document to be voted on by the city’s residents.

[Minn. Stat. § 410.05, subd. 5.](#)

[Minn. Stat. § 410.10, subd. 4.](#)

RELEVANT LINKS:

[Minn. Stat. § 410.05, subd. 2.](#)

If the voters reject the first charter proposed by a commission (absent discharge of the commission by a vote of its members or a referendum by the city's voters), the commission may continue to submit proposals until the voters finally adopt one.

[Minn. Stat. § 410.05, subd. 4.](#)

Within 30 days after its appointment, a newly created charter commission must make rules, including quorum requirements, on its operations and procedures. The commission must file an annual report of its activities with the chief judge on or before Dec. 31 of each year, and must send a copy of the report to the city clerk.

[Minn. Stat. § 410.12, subd. 1.](#)

After adoption of the charter, the charter commission continues to function. The charter commission's statutorily prescribed duty is to study the local charter and government. The commission is required by law to meet at least once each calendar year. In addition, the commission must meet upon presentation of a petition signed by at least 10 percent of registered voters, according to the last annual city election, or by resolution of a majority of the city council. Further, the commission must specifically convene to propose charter amendments upon presentation of a petition of at least 5 percent of the number of votes cast at the last state general election in the city.

[Minn. Stat. § 410.12, subd. 1.](#)

The charter commission is like a standing constitutional convention. It has the power to propose charter changes at any time. If the city's charter does not work or proves to be faulty in operation, it is the commission's duty to propose improvements. It should, therefore, meet at regular intervals as required and keep its organization intact should any emergency arise.

[Minn. Stat. § 13D.01.
IPAD 04-059.
Minn. Stat. § 15.17.
LMC information memo,
Meetings of City Councils.
Handbook, *Records*
Management.](#)

Charter commissions are subject to the Minnesota Open Meeting Law (OML) and the Minnesota Government Data Practices Act (MGDPA). In addition, as government entities, charter commissions are required by law to keep a complete record of their activities and affairs. Charter commission members should familiarize themselves with the requirements of these laws, specifically those that concern the notice and public posting of meetings under the OML.

[Minn. Stat. § 410.05, subd. 5\(a\).](#)

D. Dissolution

An appointed charter commission in a statutory city (where a home rule charter has not been adopted) may be discharged in only one of the following ways:

[LMC information memo,
City Special Elections.](#)

- By a three-fourths vote of the charter commission, if the charter commission determines that a charter is not necessary or desirable.

RELEVANT LINKS:

[Minn. Stat. § 410.05, subd. 5\(b\).](#)

See Section V-E –
Abandoning a home rule charter.

[Minn. Stat. § 410.07.](#)

[Minn. Stat. § 410.06.](#)

[LMC Charter Assistance Program.](#)
[National Civic League Model City Charter, Eighth Edition \(2003\).](#)

- After a general or special election (called by a petition of registered voters equal to at least 5 percent of the registered voters in the city) where a majority of the votes cast support the discharge of the charter commission.

If dissolved, another commission may not be formed sooner than one year from the date of discharge.

In a home rule charter city, the charter commission cannot be dissolved or otherwise cease to exist unless the home rule charter is abandoned through the statutory process for changing the city form of government.

V. The charter process

A. Drafting

In a statutory city without a home rule charter, the new charter commission must deliver to the city clerk the draft of a proposed charter or a report that states a home rule charter is not necessary or desirable. One of these documents must be provided as soon as practicable, and a majority of the members of the commission must sign it.

When a majority of commission members approves a charter draft, the commission should make and authenticate at least three identical, clear copies. All the members who approved the draft should sign each of the copies. One copy should go to the clerk of the city, who will deliver it to the city council. The charter commission should keep the second copy in its files. A third copy might be useful for newspaper publication.

1. Professional assistance

Drafting a city charter is a complex and difficult job that requires special skill. A charter commission may, subject to the dollar limitations contained in the law, employ an attorney and other personnel to assist in drafting a charter. Before getting too far along in the process, a charter commission should seek advice on what should be included in a charter and should also submit a draft to an impartial expert for final review.

The League of Minnesota Cities Charter Assistance Program can be of assistance in furnishing the commission with pertinent charter materials. The charter commission may also find it helpful to have a member of the League's staff attend an early meeting of the commission to talk about forms of government, drafting procedures, and major policy problems. The League will also provide general advice. For a nominal fee, League counsel will examine and comment on an existing charter, charter draft, or amendment.

RELEVANT LINKS:

Minn. Stat. § 410.10, subd. 1.
LMC information memo,
City Special Elections.

Minn. Stat. § 410.10, subd. 1.

Minn. Stat. § 410.10, subd. 1.

Minn. Stat. § 410.10, subd. 2.

Most proposed charters have been sent to the League for this kind of review and comment.

2. Community involvement

The commission and its committees should collect the informed and interested opinions from citizens and city officials about the existing form of government and the proposed changes. The charter commission should consider criticism or positive experiences with the existing government when drafting the charter. The commission should bring tentative proposals to the attention of the public and city officials before making final decisions. Often, the mayor, city councilmembers, and other city officials may have special insights into the merits or practicality of particular proposals.

B. Election

After receiving the signed draft charter, the clerk notifies the city council of its receipt and will typically remind the council to submit the charter to an election of the voters. If the council fails to do so, the court may order it. The ordinary rules of the conduct of elections apply and the city covers the expense of a charter election.

The charter commission may recall its proposed charter at any time before the council has fixed a date for the election. The council may authorize the commission to recall the charter at any time prior to its first publication.

The council may have options regarding the timing of the election. If no general city election is to occur within six months after the clerk receives the draft, the council must call a special charter election within 90 days of receipt of the draft charter. If a general city election will occur within six months, the council may either postpone the election on the charter until that general election, or it may call for a special election prior to the general election. If the election is held at the same time as the general election, the voting places and election officers shall be the same for both elections.

The notice of election must include the complete charter. The notice must be published once a week for two successive weeks in the official newspaper and may also be published in any other legal newspaper in the city. In first-class cities, the publication must be made in a newspaper having a regular paid circulation of at least 25,000 copies.

RELEVANT LINKS:

LMC information memo,
Public Purpose Expenditures.
A.G. Op. 442-a-20 (Jul. 18, 1927). A. G. Op. 442-a-20 (Jul. 10, 1952). A. G. Op. 159-A-3 (May 24, 1966). See “Statement of Position: Expenditure of Public Funds on Ballot Issue Advocacy,” Office of the State Auditor.

Minn. Stat. § 410.10, subd. 3.
LMC information memo,
City Special Elections.

1. Charter campaign

What is the role of the charter commission in the campaign for adoption of the charter? There are sometimes different views about the role of the charter commission and that of individual commission members.

The law does not give the commission any responsibility after the charter has left the commission, nor does it set any restrictions. Some charter commissions have served as the principal sponsoring organization for the charter. Commission members have been responsible for publicity and have made public speeches or written editorials on the commission’s (as well as the proposed charter’s) behalf.

In other cities, the commission as a whole has not been involved in the campaign, but sometimes individual members have participated. Because the statutes do not address the subject, what commission members do will depend on their perception of what is or is not appropriate. Surely, no other group is likely to know more about what is contained in the proposed charter and why, or is likely to be more interested in the outcome of the charter election.

No outsider can give much advice on how to campaign for adoption of the charter. Local conditions and the kind of opposition that might develop will determine the necessary community response. Overconfidence, however, frequently results in the defeat of a charter. The opposition is usually vocal and well organized. It is no easy task, especially at a general election, to get the necessary majority to vote in favor of the charter. Frankness and honesty about the contents of the charter can help “disarm” the opposition. Throughout its entire proceedings, the commission should inform the public of its actions.

Charter commissions should keep in mind that the use of public funds to promote a particular election outcome may be questionable. While efforts to inform voters about the charter and to encourage voters to cast their ballot seem reasonable, a “vote yes” campaign brochure is more questionable. Campaign efforts by commission members in their role as private citizens seem acceptable, provided they do not claim to speak for the entire commission.

2. Ballot

The ballot shall bear the printed words: “Shall the proposed new charter be adopted? Yes ___ No ___” (with a box after each of the last two words, in which the voter may indicate his or her choice). If alternative charters or charter provisions are submitted, the ballot shall be so printed as to permit the voter to indicate the preferred language.

RELEVANT LINKS:

[Minn. Stat. § 410.11.](#)
[Minn. Stat. § 410.04.](#) [Minn. Stat. § 410.121.](#)

[Bard v. Minneapolis, 256 Minn. 581, 99 N.W.2d 468 \(1959\).](#)

[Minn. Stat. § 410.11.](#)

[LMC Research and Information Service.](#)

[Minn. Stat. § 410.11.](#)

[Minn. Stat. § 410.11.](#)

3. Ratification

The majority needed to adopt a charter is 51 percent of those voting on the question at the election.

A three-fourths majority, however, is needed if a proposed charter alters liquor patrol limits (provisions to remove or amend charter provisions changing the sale of intoxicating liquor require a 55 percent majority). Statutory provisions specifying the percentage of necessary votes to adopt a new or revised charter or to amend a charter supersede conflicting charter provisions.

4. Filing

If voters adopt the charter, the city clerk must file copies in the office of the secretary of state, the office of the county recorder, and the clerk's office. A certificate attesting to the accuracy of the charter giving the date of the election and the vote by which the charter was adopted, must accompany each copy.

Although the Minnesota Constitution and laws do not require it, the charter commission should retain at least one copy of the charter. Printed copies of the charter should be sent to the League of Minnesota Cities, the Minnesota Historical Society, and to state and local libraries. These groups will frequently refer to the charter, and will be available to other Minnesota charter commissions considering new or amended charters. If the city has a website, it may want to consider posting an electronic copy of the charter for increased public access.

5. Effective date

The charter will take effect 30 days after the election or at another time specified by the charter. The charter supersedes any previous charter of the city. The courts must take judicial notice of the charter.

The officials elected and appointed under the newly adopted charter may then take control of the city's records, money, and property at any time specified by the charter. The charter may provide that until an election of officers occurs, the officers under the old charter will continue to function. When the new charter becomes fully operational, the re-organized city corporation is in all respects the legal successor of the corporation organized under the old charter or state law. Existing, consistent ordinances and contracts continue until the council changes them or they expire by their terms.

RELEVANT LINKS:

[Minn. Stat. § 410.10, subd. 4.](#)

[Minn. Stat. § 410.05, subd. 5\(a\)\(1\).](#)

[Minn. Stat. § 410.05, subd. 5\(a\)\(2\).](#)

[Minn. Stat. § 410.05, subd. 5\(b\).](#)

[Minn. Stat. § 410.12, subd. 1a.](#)

[Minn. Stat. § 410.12, subd. 1.](#)

[Minn. Stat. § 410.12, subs. 1-3.](#)
[A.G. Op. 59a-11 \(Dec. 30, 1981\).](#)

[Minn. Stat. § 410.12, subd. 1.](#)

6. Rejected charters

If less than 51 percent of those voting on the question do not vote in favor of the proposed charter:

- The charter commission may choose to modify its proposed charter and re-submit the charter for election.
- The charter commission may choose to disband by a three-fourths vote of its members.
- The city voters may disband the charter commission through a petition and referendum process.

When a charter commission disbands itself or is discharged by the city voters, another commission may not be formed sooner than one year from the date of discharge.

C. Amendments

Charter cities will find it necessary to update or otherwise modify their charter to reflect current needs and expectations. Amendments must originate through one of the several ways that are provided in statute:

1. Amendment by proposal

a. Charter commission

A charter commission may propose amendments to the charter at any time.

b. Citizen petition

A charter commission must propose amendments upon receiving a petition signed by a number of registered voters equal to 5 percent of the total votes cast at the previous state general election in the city. This percentage cannot be changed by the charter itself.

All petitions circulated must be uniform in character. The petition must state the proposed amendment to the charter in full. However, if the proposed amendment is larger than 1,000 words, a true and correct copy must be filed with the city clerk, and the petition will contain a summary (between 50 and 300 words) setting forth the “substance and nature” of the proposed amendment. When a summary is used, that summary (along with a copy of the proposed amendment) must be first submitted to the charter commission for its approval as to form and substance. The commission has 10 days to return the summary with any modifications necessary to fairly comply with these requirements.

RELEVANT LINKS:

Minn. Stat. § 204B.071.
Minnesota Secretary of State
- Petitions.

Minn. Stat. § 410.12, subs.
1, 4.

*Davies v. City of
Minneapolis*, 316 N.W.2d
498 (Minn. 1981). *Haumant
v. Griffin*, 699 N.W.2d 774
(Minn. Ct. App. 2005).

Minn. Stat. § 410.12, subd. 5.

Minn. Stat. § 410.12, subd. 7.

Minn. Stat. § 410.12, subd. 7.

The secretary of state is required to develop rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected. The secretary of state shall provide samples of petition forms for use by election officials. Once received, the commission must submit the petition to popular vote.

c. Process and procedure

The amendment goes to the city clerk, who notifies the council. The council then provides for the election under the same rules that apply to a new charter. The council may not refuse to submit or change the amendment as long as it is constitutional. A city council does not need to submit an unconstitutional charter amendment or an amendment that violates state or federal law to the voters. When an amendment to a charter is proposed by the charter commission or petitioned for by the voters of the city, the proposed amendment must be submitted at least 17 weeks before the general election.

2. Amendment by ordinance

a. City council

The city council may propose an amendment by ordinance. The council submits the ordinance proposing an amendment to the commission, which has 60 days for review (which may be extended by the commission an additional 90 days by filing a resolution determining that additional time is necessary with the city clerk). After the review period, the commission returns the amendment or its own substitute amendment to the council. The council then submits to the voters either the amendment it originally proposed or the commission’s substitute amendment.

b. Charter commission

The charter commission may recommend the council amend the charter by ordinance. Within one month of receiving a recommendation to amend the charter by ordinance, the city must publish notice of a public hearing of the proposal (which must also contain the text of the proposed amendment).

The city must hold the public hearing on the proposed charter amendment at least two weeks but not more than one month after the notice is published. Within one month of the public hearing, the city council must vote on the proposed charter amendment ordinance. The vote must be unanimous, including approval by the mayor if the mayor has veto power.

RELEVANT LINKS:

[Minn. Stat. § 410.12, subd. 7.](#)

The ordinance proposing the amendment is subject to the same publication requirements as other ordinances. The ordinance becomes effective 90 days after passage and publication, unless a later date is provided in the ordinance.

Within 60 days after passage and publication, a petition signed by registered voters equal in number to at least 5 percent of the registered voters in the city or 2,000, whichever is less, may be submitted to force a referendum on the amendment.

If voters file a proper petition, the city must handle the amendment like any other charter amendment, except the council may submit the ordinance at a general or special election that occurs within 60 days after filing the petition, or it may reconsider its action in adopting the ordinance.

[Minn. Stat. § 410.12, subd. 6.](#)

c. Cities of the fourth class

In cities with a population of less than 10,000, the council may propose amendments by ordinance without submitting them to the charter commission. Four-fifths of the councilmembers must vote for the ordinance. Two weeks published notice is necessary before the vote. The council must then submit the ordinance to the voters like any other amendment.

[Minn. Stat. § 410.10.](#) [Minn. Stat. § 410.12, subd. 4.](#) [Minn. Stat. § 410.121.](#)
See Section V-B – *Election*.

3. Elections

The election concerning proposed amendments and the arrangement of the ballot are substantially the same as in the case of the adoption of a new charter. An amendment needs the favorable vote of 51 percent of those voting on the question.

[Minn. Stat. § 410.12.](#) [Minn. Stat. § 410.11.](#)

4. Notice

Amendments, like charters, need the clerk's certification. Copies must be filed in the offices of the secretary of state and county recorder, as well as in the clerk's office. Amendments take effect either at the end of 30 days after the election, or at some other time if the amendment so specifies. The law also allows for alternative proposals.

[LMC Charter Assistance Program.](#)

The League of Minnesota Cities Charter Assistance Program would appreciate a copy in order to keep the LMC charter collection up to date. State and local libraries and the Minnesota Historical Society are also suggested recipients. A city may also want to consider posting charter amendments to its website to keep the online charter up to date.

RELEVANT LINKS:

[Minn. Const. art. XII, § 5.](#)

[Minn. Stat. § 410.30.](#)

[Minn. Stat. § 410.30.](#)

[Minn. Stat. § 410.16.](#)

[National Civic League
Model City Charter, Eighth
Edition \(2003\).](#)

[Park v. City of Duluth, 134
Minn. 296, 159 N.W. 627
\(1916\). State v. City of
Duluth, 134 Minn. 355, 159
N.W. 792 \(1916\). City of
Duluth v. Cervený, 218
Minn. 511, 16 N.W.2d 779
\(1944\).](#)

D. New or revised charters

Any city having a home rule charter may adopt a new or revised charter in the same manner as an original charter. If a new or completely revised charter is to go to the voters, the preparation of the ballot and other procedures are substantially the same as for the original charter.

E. Abandoning a home rule charter

Any home rule city may abandon its charter and become a statutory city. Since the state was formed, only three cities—Jordan, Isanti, and Sauk Centre, all since 1989—have abandoned their charter form of government.

These three cities are now Plan A statutory cities. A city may abandon its charter by presenting a proposal, adopting it, and having it become effective in the same manner as a charter amendment. Accordingly, abandonment would require the approval of 51 percent of those voting on the question.

The proposal must include a schedule containing necessary provisions for transition to the statutory city form of government in order to place the city on a regular election schedule as soon as practicable. The proposal may provide for continuation of specified provisions of the home rule charter for an interim period, and must specify the plan under which the city will operate as a statutory city.

VI. General powers

A city charter should deal only with the fundamentals of the governmental organization of the city, leaving the council free to exercise a broad grant of authority by ordinance. Modern charters contain provisions that claim for the city all powers that the home rule provision of the constitution permits a city to assume. Older charters contain a long list of specific grants giving various powers to the city. The strong statements of intent found in League and National Civic League model charters should be adequate to ensure that the omnibus grant gives the city all the municipal power it might receive through more specific grants.

Minnesota Supreme Court decisions generally have given a liberal construction to all-powers grants in city charters. In addition to powers granted by the charter, various state statutes may give additional powers to a city and regulate certain activities. For example, authority for planning, police civil service commissions, and municipal forest maintenance is included in laws dealing specifically with these subjects.

RELEVANT LINKS:

Minn. Stat. § 410.33.
Minn. Stat. ch. 412.
*In re HUC Pipeline
Condemnation Litig., No.
A03-1125* (Minn. Ct. App.
May 4, 2004) (unpublished
decision).

*Nordmarken v. City of
Richfield*, 641 N.W.2d 343
(Minn. Ct. App. 2002). *Lilly
v. City of Minneapolis*, 527
N.W.2d 107 (Minn. Ct. App.
1995).

Handbook, *Property Tax
Levy*.

Minn. Stat. § 275.75.

Handbook, *Municipal
Budgeting*.

Handbook, *Property Tax
Levy*.

A home rule charter may provide any municipal powers the Legislature could have delegated to the city, as long as the powers are consistent with state statutes. A number of city charters have attempted to do this. Under such a grant, the charter may authorize the city to provide for medical clinics, public transit, and industrial parks. It may authorize any of a range of public enterprises as long as they do not involve the use of public funds for an unconstitutionally private purpose. The limits depend more on public policy than on the lack of home rule charter power.

If a charter is silent on a topic that Chapter 412 or another statute addresses for statutory cities, home rule cities may usually apply the general law on the subject. If, however, general law prohibits a charter from addressing the matter or provides that the charter prevails over general law, the home rule city may not apply the general law.

No city, however, even one organized under a city charter, has inherent powers. A city may only exercise such powers that are expressly conferred by statute or are implied as necessary in aid of those powers. If a matter presents a statewide problem, the implied necessary powers to regulate are narrowly construed unless the Legislature has provided otherwise.

VII. Charter subjects and provisions

The following list of powers are addressed within many home rule charters is not complete or all-inclusive. Many provisions contained within a city charter are also discussed in more detail in other chapters of the LMC Handbook for Minnesota Cities.

A. Taxes

Presumably, a charter may grant a home rule city power to tax although the state has largely pre-empted two local non-property taxes: the sales tax and the income tax. State law has historically provided some differences between home rule charter cities and statutory cities in property tax levy authority.

For example, the Legislature allows charter cities to exceed their charter limits or referendum requirements for levy increases if the increased levy was needed to offset reductions in city local government aid (however, any state-imposed levy limits still apply).

B. Finance

The charter may, but does not need to, require a budget system (however, current truth-in-taxation laws require all cities to prepare a budget).

RELEVANT LINKS:

Minn. Stat. § 410.325.

Handbook, *Debt and Borrowing*.

Minn. Stat. § 412.321.

A.G. Op. 624a-3 (June 28, 1999).

Minn. Stat. § 444.075, subd. 3(b).
LMC information memo, *Securing Payments of Utility Charges*.

Handbook, *City Regulatory Functions*.
Minn. Stat. § 410.09.

Minn. Stat. § 412.191, subd. 4.

The charter may regulate the payment of claims and may also limit or broaden the purposes for which the city may spend money beyond the limits set for statutory cities. For example, a charter could allow appropriations to private agencies performing work of a public nature, while statutory cities probably could not. The law limits statutory cities in their issuance of warrants in anticipation of the collection of taxes. A charter may broaden or curtail this authority.

Both statutory and home rule charter cities may use a system of anticipation certificates. A charter may lower the debt limit applicable to cities, but it may not raise the limit. A charter can also restrict the purposes for which the city may issue bonds, and it can make the procedure easier or more difficult.

C. Utilities

1. Municipal utilities

While statutory cities may establish electric, gas, light, and power utilities only after a vote by the people—regardless of the method of financing—a charter may provide for acquisition without a vote or may require a different majority from the majority necessary in statutory cities. A charter may give the right of condemnation without a time limit. A charter may also allow the city to use surplus utility funds to support general funds.

Charters may not attempt to set utility rates for water, sewer, and stormwater utilities. Charter provisions may not artificially inflate or suppress rates. Authority to set rates is vested exclusively in the city council by state statute.

2. Regulation

The Minnesota Public Utilities Commission and the Department of Commerce regulate the service and rates of private gas, electric, and telephone utilities. However, charters may acquire gas and electric franchises and may adopt regulations, including requirements for a gross earnings tax or similar fees. Strict limitations on the use of franchises, taxation, and fees for the use of public rights-of-way exist, whether or not a city has a charter.

D. Ordinances

1. Procedures

Statutory cities may pass an ordinance on a single reading at the same meeting that the ordinance first comes before the council.

RELEVANT LINKS:

[Minn. Stat. § 410.20.](#)

[Minn. Stat. § 410.20.](#)

[Hanson v. City of Granite Falls](#), 529 N.W.2d 485 (Minn. Ct. App. 1995).

[HRA v. City of Minneapolis](#), 293 Minn. 227, 198 N.W.2d 531 (Minn. 1972). A.G. Op. 858 (Oct. 26, 1970). A.G. Op. 858 (August 5, 1970). But see [City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.](#), 538 U.S. 188, 123 S. Ct. 1389 (U.S. 2003). A.G. Op. 185b-2 (Mar. 8, 1962).

[Minn. Stat. § 205.02, subd. 2.](#)
[Minn. Stat. § 205.07, subd. 1.](#)

[Minn. Stat. § 410.16.](#)

[Minn. Stat. § 351.02.](#)
[A.G. Op. 59a-30 \(Jul. 24, 1996\).](#)

The ordinance must be published in full or in summary form in the local newspaper. Statutory cities may, but do not need to, require several readings and a lapse of time between readings. Charters may or may not provide for publication, and they may impose other restrictions on the ordinance process.

2. Initiative and referendum

Statutory cities may not submit ordinances to the people for approval under the initiative and referendum process. Only home rule charter cities may provide for initiative and referendum through their charter.

Only ordinances that are “legislative in character” may be enacted through the initiative and referendum process. Legislative actions are those that are general in nature and lay down a permanent and uniform rule of law.

Administrative actions, on the other hand, are those of a temporary and special character. They merely carry out existing laws and relate to the daily administration of municipal affairs. Administrative actions include the settlement of lawsuits, entering of contracts, acceptance or rejection of bids, sale of municipal bonds, appointment of city officials, levying of taxes, granting of licenses and permits, and the adoption of budgets.

E. Elections

State statutes regulate many phases of election procedure, but some may be open to city regulation through the charter. State law fixes the date of city elections in both statutory and home rule cities for the first Tuesday after the first Monday in November in even or odd years.

F. Elected officials

1. Wards

The charter may use proportional representation and may set up different nomination procedures from those in statutory cities. The charter may provide for ward representation, which is generally not available to statutory cities.

2. Removal by the council

State law establishes the specific situations that create vacancies in elective office. A charter may not provide for removal of councilmembers by the council for any reason not explicitly stated in statute.

RELEVANT LINKS:

Minn. Stat. § 410.20.
Minn. Const. art VIII, § 5.
Jacobsen v. Nagel, 255
Minn. 300, 96 N.W. 2d 569
(1959).

*Minneapolis Term Limits
Coalition v. Keefe*, 535
N.W.2d 306 (Minn. 1995).

A.G. Op. 624a-3 (June 28,
1999) . A.G. Op. 1001-a
(Sept. 15, 1950). *Muehring v.
School District No. 31*, 224
Minn. 432, 28 N.W.2d 655
(1947). *Minneapolis Gas and
Light Co. v. City of
Minneapolis*, 36 Minn. 159,
30 N.W. 450 (1886).

Minn. Stat. § 471.345.

A.G. Op. 59-a-15 (Aug. 22,
1969)

*Queen City Constr., Inc. v.
City of Rochester*, 604
N.W.2d 368 (Minn. Ct. App.
1999).
Handbook, *Expenditures
Purchasing and Contracts*.

3. Recall

Home rule charter cities have some limited authority to provide for recall elections of the city's elected officials. The Minnesota Constitution and state court decisions have restricted the recall of elected city officials to cases of serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office. Recall does not exist in statutory cities.

4. Term limits

A charter may not impose term limits on city elected officials.

G. City personnel

In home rule cities, the charter may establish procedures for the appointment and removal of non-elective officers and employees at the discretion of the council. The charter may include restrictions, such as a formal civil service system, and it may authorize the council to fix administrative salaries subject to the limitations and procedures provided by the charter.

H. Delegation of powers

Absent specific statutory or charter authority, the council of a charter city may not delegate powers and duties that require the exercise of judgment and discretion to other persons or bodies. Specific language must exist in the charter for any delegation to occur.

I. Contracts

State law establishes bidding procedures and uniform dollar limits for all city contracts for the purchase, sale, or rental of supplies, materials, or equipment, or the construction, alteration, repair, or maintenance of real or personal property.

While the language leaves some doubt about the application of the law to home rule charter cities, the attorney general was of the opinion that the statute supersedes all charter provisions concerning uniform dollar limitations. Presumably, the charter may regulate some phases of the contracting procedure, but most charters deal only with subjects not covered by the state law.

RELEVANT LINKS:

[Minn. Stat. § 412.222.](#)

[Minn. Stat. § 6.54.](#) [Minn. Stat. § 6.55.](#)

[Minn. Stat. §§ 471.695-.698.](#)

Handbook, *Property Tax Levy.*

Handbook, *City Licensing.*
Handbook, *City Regulatory Functions.*

Handbook, *Financing Public Improvements.*
[Minn. Const. art. X, § 1.](#)
[Minn. Stat. ch. 429.](#)
[Minn. Stat. § 429.111.](#)

[Minn. Stat. § 429.021, subd. 3.](#)

[Minn. Const. art. X, § 1.](#)

Curiskis v. City of Minneapolis, 729 N.W.2d 655 (Minn. Ct. App. 2007).

J. Accounting

Under the law, statutory cities may employ a public accountant or the state auditor to perform an audit. By charter, cities may require an annual audit by the person designated to perform the audit. Charter cities are also subject to the law that requires the state auditor to examine a city's records on the initiative of the council or a petition of citizens.

All cities are required to publish their annual financial statements. In home rule cities, the charter may require additional reports and publication of the reports depending on the desires of the community. The number and kinds of funds, and the authority to transfer between funds, may come under charter regulation with minimum statutory restriction. In statutory cities, the law is more restrictive on this subject.

K. Licensing and regulation

While statutory cities must find a specific statute authorizing the licensing or regulation of an activity before they can regulate that activity, a charter city can often rely on an all-powers provision in its charter to license or regulate activities within its borders. Without such an all-powers or other broad grant of authority, a charter city must find a specific charter provision or state law authorizing the regulation.

L. Special assessments

Both statutory and home rule cities may finance local improvements by special assessments against benefited property under a uniform constitutional and statutory procedure. While most home rule cities follow state law, a city charter may provide a different procedure or authorize the council to adopt a different procedure and may require the city to use that method exclusively. A charter city, however, must conform to certain requirements of state law. The charter can require the city to use general funds or service charges, rather than special assessments, for local improvements. Any special assessments used must comply with the constitutional requirement that the amount of the special assessments cannot exceed the increased market value of the property as a result of the benefit due to the local improvement.

Some charters with special assessment provisions authorize the city council to choose between utilizing the charter provisions or state law when imposing special assessments. A court case has validated such charter provisions. However, when a city elects to use its charter provisions for a special assessment project, the charter provisions must be followed throughout the entire project.

RELEVANT LINKS:

Handbook, *Expenditures Purchasing and Contracts*. LMC information memo, *Purchase and Sale of Real Property*.

Handbook, *Liability*.

Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002).

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W.2d 813 (1966). *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2006).

State v. Burns, No. A05-2554 (Minn. Ct. App. Mar. 20, 2007) (unpublished decision).

The city cannot later elect to use the state law provisions for the same special assessment project. Likewise, the city cannot commence a special assessment project under the procedure in state law and then later elect to utilize the charter procedure.

M. Real estate

Charter and statutory cities may acquire real estate that is needed for public purposes, and the council can dispose of it when it is no longer needed. State law does not require bids or approval of the voters, but a charter may impose such restrictions.

N. Liability

Both statutory and home rule cities are subject to the same tort liability imposed by statutes and court decisions.

Home rule charter cities may not attempt to extend or curtail the city’s liability to any extent.

VIII. Conflicts with state law

Harmonizing general statutory language and charter provisions that deal with the same subject can be difficult. Cities can resolve potential conflicts between state laws and charter provisions through the following process:

A. General rule

The general rule is that when a charter provision is in conflict with the state statutes, the statutory provisions prevail and the charter provision is ineffective to the extent it conflicts with the state policy.

B. Identifying conflicts

When state law is silent on an issue covered by charter and the issue is one that the Legislature has the power to delegate to a city, the assumption is that there is no conflict with state policy. On the other hand, when a charter provision and state law deal with the same issue, the possibility for conflict occurs.

Rather than requesting an attorney general’s opinion or having a court resolve the possible conflict, a city council can, by resolution, rely on the opinion of its attorney as to whether a conflict exists. In making this decision, the attorney should consider the following points:

RELEVANT LINKS:

[Minn. Stat. § 410.015.](#)

Columbia Heights Relief Ass'n v. City of Columbia Heights, 305 Minn. 399, 233 N.W.2d 760 (1975). *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2006). *State v. Burns*, No. A05-2554 (Minn. Ct. App. Mar. 20, 2007) (unpublished decision).

- Is there a court case or attorney general opinion that deals with the same or similar provisions? If so, the city must follow the court ruling. Even though attorney general opinions are only advisory, a city should seriously consider the reasoning behind the opinion.
- In the absence of a court decision or attorney general ruling, does the state law clearly outline or imply a policy decision by the Legislature that the law applies to charter cities as well as to statutory cities?

For laws passed by the Legislature since 1976, this determination is easy. In any law taking effect after July 1, 1976, the word “city” means statutory city only. After that date, in order for a law to apply to charter cities, the law itself must clearly state it applies to both statutory and home rule charter cities. A mere reference to all cities would not be sufficient to include charter cities.

For laws enacted prior to July 1, 1976, cities should look for phrases such as, “all cities shall” or “unless the council determines to proceed under charter provisions” for clues of legislative intent.

Generally, laws enacted by the Legislature for the purpose of protecting the public prior to July 1, 1976, probably apply to all cities.

C. Resolution

Even if a general state law applies to charter cities, it does not necessarily supersede a charter provision. If both the charter and state law direct the city to take certain actions or follow certain procedures, it may be advisable to follow both the charter provision and the state law, in order to resolve any conflicts between the two provisions. State law supersedes charter provisions only to the extent the charter provisions conflict with state policy.

IX. How charter cities should use the LMC handbook

This handbook is written for both statutory and home rule charter cities. Each chapter includes a section on how the chapter relates to charter cities. Because of the differences in city charters, it is difficult to generalize about how an individual charter city will be impacted by any particular state law. The handbook does, however, address statewide laws and rules, court decisions, and attorney general opinions that apply to charter cities.