

**From:** [Mark R. Reich](#)  
**To:** [Papas, Valerie](#)  
**Cc:** [Sideris, Mark](#)  
**Subject:** Charter Review Process  
**Date:** Wednesday, March 31, 2010 2:15:21 PM  
**Attachments:** [charter procedures.pdf](#)

---

Val:

Please distribute the following to all Councilors:

You have requested information concerning the process for amending the Charter. In my opinion, there are only two ways to amend the Charter. The first is in accordance with G.L. c.43B, the so-called Home Rule Procedures Act, G.L. c.43B, and involves a somewhat lengthy and administratively burdensome process. The second is pursuant to a special act. I have discussed each of these amendment methods in further detail, below.

#### G.L. c.43B

General Laws c.43B, commonly referred to as the Home Rule Procedures Act, and Amend. Art. II of the Massachusetts Constitution, the so-called Home Rule Amendment, allow a municipality to amend its charter without involvement of the state legislature. The required process involves multiple steps, and can therefore take a significant amount of time. Amendments to the Charter that relate in any way to the composition, mode of election or appointment, or terms of office of the Town Council (the legislative body) or the Town Manager, a so-called Charter "revision", may be proposed only by a charter commission elected in accordance with the process set forth in G.L. c.43B. I understand, however, that the proposed Charter amendments to do not relate to such matters.

Amendments to a charter that do not relate to the composition, mode of election or appointment, or terms of office of the legislative body, so called "minor" charter changes, may be proposed by the Town Council by a two-thirds vote of those members present and voting. G.L. c.43B, §10(a). Additionally, a charter amendment "suggestion" process exists, in which a charter amendment may be suggested in writing by a single member of the Town Council, the Town Manager, or by petition. G.L. c.43B, §10(b). If a charter amendment is suggested in this manner, then a public hearing process must be undertaken prior to action on the same by the Town Council. In summary, the Council within three months of receipt of a suggested amendment, shall order a public hearing be held, either by it, or by a committee selected or established by the Council. The hearing, for which notice must be published in a newspaper of general circulation in the Town at least seven days prior thereto, must be held not later than four months after the filing of the amendment. The Town Council must take action on the suggested amendment no later than six months after the filing date.

Following approval of the proposed charter amendment, it is forwarded to the Department of Housing and Community Development, and to the Attorney General for approval as "not inconsistent with state laws and constitution." If the Attorney General approves the form of the amendment, it becomes effective four weeks after submission to the Attorney General. Thereafter, the revision or amendment must be presented to the voters at the next regular election occurring at least two months after the effective date. Thus, in order for the question of amending the charter to appear on the ballot at the next regular election, the amendment must be submitted to the Attorney General not later than three months prior to the date of such election. Moreover, depending on whether the amendment is "suggested," it may need to be submitted to the Town Council well in advance thereof in order to allow sufficient time to comply with the applicable procedural requirements. Note further that at least two weeks prior to the election at which the ballot question will be considered the Town must send to all residences of the Town with one or more voters the proposed charter amendment.

The benefits of proceeding in accordance with G.L. c.43B include that no state legislative action is needed and predictability with regard to when the amendments will take effect. The drawbacks include the administrative process, including deadlines that appear to be somewhat arbitrary, and certain content limitations.

The above discussion is simply an outline of a more complicated process. For further detail, please review the booklet from the Secretary of the Commonwealth's Elections Division, attached, or G.L. c.43B.

#### Special Act

Pursuant to Section 8 of the Home Rule Amendment, the General Court may make laws relative to a single municipality upon petition of that municipality. Accordingly, in order to request special legislation amending a municipal charter, as with any other special legislation, the Town Council, by majority vote, must vote to petition the General Court.

The Massachusetts Constitution does not require that such a special act be accepted by the voters at an election. However, as a matter of practice the General Court often favors such a result. This is the case particularly in those instances when the special legislation will involve a change in any of the substantive areas requiring election of a charter commission under the Home Rule Procedures Act (i.e., change in the powers and duties or terms of the Town Council and/or Town Manager), or any other significant change such as alteration of the powers and duties or terms of any elected official. If the Council believes that a ballot question would be beneficial, it is important to note that unlike a G.L. c.43B amendment, there is no requirement, or authorization, to distribute to voters at the Town's expense information concerning the proposed amendment. For that reason, if the Council believes that distribution of information would be beneficial, authorization therefor should be included in the proposed special legislation.

The benefits of proceeding with a special act include that a special act may be voted at any time and the lack of content limitations. The drawbacks of such action include that it is difficult to predict with any accuracy when the General Court might act on such a petition, as well as the potential that the General Court may require that the act be subject to local acceptance.

As noted above, I have attached hereto a publication of the Secretary of the Commonwealth's Elections Division concerning the Charter amendment process that details the particulars concerning amendment of the Charter utilizing either amendment method.

Please let me know if you have any further questions concerning this matter.

Mark R. Reich, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12th Floor  
Boston, MA 02110  
(617) 556-0007 (voice)  
(617) 654-1735 (fax)  
mreich@k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and its attachments, if any, and destroy any hard copies you may have created and notify me immediately.