

We can elect health board members:

Local Charter Procedures Handbook by the Secretary of the Commonwealth:

“A charter adopted by home rule may provide: that any particular local office be elected or appointed.”

“[M]ost provisions concerning local government structure, officers, terms, and method of selection are automatically consistent with state law.”

See Attachment A.

[M.G.L. c. 43B, § 20](#)

“The provisions of any charter or charter amendment...shall be deemed consistent with the provisions of any law relating to the...mode of selection of local offices....***Such provisions may provide: (a) that any particular local office shall be either elected or appointed.***”

Emphasis added.

[M.G.L. c. 111, § 26](#)

“***Unless otherwise provided in the city charter,*** [health board] members shall be appointed by the mayor, subject to confirmation by the board of aldermen.” Emphasis added.

Thus, appointment by the mayor is not a requirement. It is the default procedure for cities that have not provided a different selection method.

For example, the mayor of Chicopee does not appoint health board members. Instead, health board members are elected by the city council. See Chicopee [Charter Article, III, § 16](#).

Attachment A

How Can A Local Charter be Changed ?

In general, the four kinds of charters can now be adopted or changed only by the two methods described in this booklet: Each method has advantages and disadvantages.

The Home Rule Charter Method

The home rule charter method permits greater local autonomy, but it can take more time.

There are some limitations on the contents of a home rule charter, which do not apply to the special act charter.

The Special Act Charter Method

The special act charter method can be faster, but it requires approval by the state Legislature.

Using either method, towns must have a population of at least 12,000 in order to adopt a "city" form of government; and must have at least 6,000 to adopt a "representative" town meeting. Consult the full descriptions of these methods in Parts Two and Three.

Legal References:

- Two methods: *Board of Selectmen v. Town Clerk*, 370 Mass 114, 345 N.E. 2d 699 (1976); *Marino v. Town Council*, 7 Mass. App. Ct. 461, 388 N.E. 2d 334 (1979).
- City and town limitations: HRA, § 2, 8. See *Chadwick v. Scarth*, 6 Mass. App. Ct. 725, 383 N.E. 2d 847 (1978).

Part Two

The Home Rule Charter Method

A city or town may adopt or change a charter without action by the state Legislature by using one of the two, home-rule charter procedures:

- adoption or revision, or
- amendment.

However, with either of these procedures there are content limitations which are not encountered using the Special Act method described in Part Two.

Content Limitations

Provisions adopted or changed must be consistent with laws passed by the state Legislature. However, most provisions concerning local government structure, officers, terms, and method of selection are automatically consistent with state law.

Unless the state Legislature expressly approves, no charter provision adopted or changed using the home rule charter method may:

- regulate elections (other than those involving these home rule charter procedures, themselves)
- levy, assess, or collect taxes

- borrow money or pledge the credit of the city or town
- dispose of park land
- govern civil relationships (such as those between landlords and tenants) except incidentally to an independent local power
- define and punish a felony, or impose imprisonment as a punishment

Within these limitations the adoption or revision procedure may be used either to adopt a new charter or to change a current charter or "special act" (unless the special act specifically provides otherwise), while the amendment procedure may be used to change a current charter or "special act" (unless the special act specifically provides otherwise).

Further, the amendment procedure may not be used to change the composition, mode of election or appointment, or terms of office of the local legislative body, the mayor, the selectmen or the city or town manager. A provision prohibiting dual office holding does not constitute a change in the mode of election of a town officer.

A charter adopted by home rule may provide:

- that any particular local office be elected or appointed (except a board of selectmen, school committee, moderator, or members of legislative body who must be elected);
- for the term of office to be served by any local elected officer, provided that no term shall be more than five years;
- for the merger of two or more local offices; or
- for the powers and duties of one office to be divided and exercised by two or more offices.

If a town wishes to elect a new board or officer, increase/decrease the number of members of a board, or fix the term of office of town officers, it can do so in accordance with chapter 41, §2, without using these procedures to amend its charter.

Legal References:

- Home rule charter method generally: HRA § 2; G.L. ch. 43B, §2.
- Consistent with state law: HRA § 2; G.L. ch. 41, § 1; ch. 43B, § 20.
See *Anderson v. City of Boston*, 376 Mass. 178, 380 N.E. 2d 628 (1978), appeal dismissed, 439 U.S. 1060 (1979); *DeDuca v. Town Administrator*, 368 Mass. 1, 329 N.E. 2d 748 (1975);
Bloom v. City of Worcester, 363 Mass. 136, 293 N.E. 2d 268 (1973).
See also *Brown, Home Rule in Massachusetts: Municipal Freedom and Legislative Control*, 58 Mass. L.Q. 29 (1973).
- Express state approval required: HRA § 7.
- "Adoption or revision" procedure: HRA § 3.
- "Amendment" procedure: HRA § 4 Charter consistent with other laws: G.L. ch. 43 B, § 20
- Amending charter by general law: *Hauden v. Town of West Springfield*, 22 Mass. App. Cl. 902 (1986) *Harrington v Board of Selectmen*, 379 Mass. 652 342 N.E. 2nd 703 (1976) *Medeiros v. Board of Election Commissioners*, 376 Mass. 286, 291, 325 N.E. 2d 579 (1975)

Adoption or Revision Procedure

This is a rather complex, lengthy procedure. It can take two years to implement in a city and at least a year in most towns. It requires

- petitioning for a question to local voters,