

Municipal Charters: Adopting, Amending, and Appreciating

This workshop will be an in-depth look at municipal charters in Rhode Island. Presenters will provide a brief historical and legal overview of municipal charters and home rule authority, shedding light on the purpose of a charter and what subjects should be addressed in a charter rather than the general code of ordinances. We will discuss best practices for amending your charter, from forming a charter review commission to putting the questions before voters for ratification. Finally, we will review excerpts from selected municipal charters and provide data regarding recently proposed charter amendments.

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**Meredith J. DeSisto, CMC
Town Clerk, Town of Barrington**

Meredith began working for the Town of Barrington in the Town Clerk's office in 2005. In 2013, she was appointed as the Barrington Town Clerk. That same year, she was appointed to the Charter Review Commission. The General Election in November 2014 contained 39 ballot questions amending the Home Rule Charter for the Town of Barrington. The voters of Barrington approved 31 of those questions and rejected 8. Meredith received her Certified Municipal Clerk's certificate (CMC) from the New England Municipal Clerks Institute and Academy in 2013 and is working towards her Master Municipal Clerk certificate.

**Louis P. Cirillo, CMC
Town Clerk, Town of Bristol**

Lou is a native Rhode Islander and a lifelong resident of the Town of Bristol and has been the elected Bristol Town Clerk since 2004. He has held elected/appointed public office in Bristol continuously since 1982 and received one of the Town's highest honors – Chief Marshal of its world renowned 4th of July Celebration - in 2013.

Lou is a graduate of the New England Municipal Clerks Institute and Academy, is an International Institute of Municipal Clerks Certified Municipal Clerk (CMC), and the most recent Past-President of the Rhode Island Town & City Clerks Association.

What is home rule authority?

"Traditionally, cities and towns were held to be creatures of the Legislature having no inherent right to self-government but deriving all of their authority and power from the Legislature." See Lynch v. King, 391 A.2d 117, 122 (R.I. 1978).

With the passage of the Home Rule amendment of the Rhode Island Constitution in 1951, each Rhode Island city or town that has enacted a home rule charter was granted the authority to "enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the General Assembly in conformity with the powers reserved to the General Assembly." See R.I. Const. Art. XIII, § 2.

"[C]ities and towns that have adopted home rule charters are free to exercise authority over purely local concerns." See Town of East Greenwich v. O'Neil, 617 A.2d 104, 111 (R.I. 1992). If a matter is not "purely local," then the municipality may only regulate the matter if the General Assembly has passed enabling legislation authorizing the municipality to regulate the matter.

Three-part test for distinguishing purely local from statewide:

"First, when it appears that uniform regulation throughout the state is necessary or desirable, the matter is likely to be within the state's domain. . . . Second, whether a particular matter is traditionally within the historical dominion of one entity is a substantial consideration. . . . Third, and most critical, if the action of a municipality has a significant effect upon people outside the home rule town or city, the matter is apt to be deemed one of statewide concern." See O'Neil, 617 A.2d at 111 (internal citation omitted).

Discussion:

- Does it make sense, in a tiny state like Rhode Island, with 39 small municipalities, to allow each municipality to have independent home rule authority? What are the benefits? The drawbacks?
- What are the practical differences in the way the 36 home rule municipalities run from the way the two municipalities with legislative charters (Warwick & NP) and one with no charter (Scituate) run?
- In what areas is home rule authority beneficial? In what areas is regulation more appropriately left to the state? Examples of municipality acting beyond its home rule authority?

Examples of statewide concerns:

- Taxation - Ramsden v. Ford, 143 A.2d 697, 698-99 (R.I. 1958);
- Education - Royal v. Barry, 160 A.2d 572, 575 (R.I. 1960);
- Business regulation & licensing - Nugent v. City of East Providence, 238 A.2d 758, 761 (R.I. 1968) & Newport Amusement Co. v. Maher, 166 A.2d 216, 218 (R.I. 1960);
- Procedural aspects of elections - Opinion to the House of Representatives, 96 A.2d 627 (1953)(nonpartisan nominations and elections, fixing the time for holding elections, and specifying the number of signatures required on nomination papers);
- Regulating police officers and suppression of crime - Marro v. General Treasurer of Cranston, 273 A.2d 660 (1971);
- Public utility regulation - Town of East Greenwich v. O'Neil, 617 A.2d 104 (R.I. 1992)
- Zoning, land development and subdivision regulations - Munroe v. Town of East Greenwich, 733 A.2d 703 (R.I. 1999)

Examples of local concerns:

- Regulating public drains and sewers - Westerly Residents for Thoughtful Development, Inc. v. Brancato, 565 A.2d 1262 (R.I. 1989);
- Fishing & swimming in local waterbodies - Westerly v. Bradley, 877 A.2d 601, 607 (R.I. 2005);
- Municipal employee pension plans - Bruckshaw v. Paolino, 557 A.2d 1221, 1223 (R.I. 1989);
- Voting districts for local offices - Advisory Opinion to House of Representatives, 628 A.2d 537 (R.I. 1993);
- Noise regulation - State ex rel. City of Providence v. Auger, 44 A.3d 1218 (R.I. 2010)

If matter is statewide, then explicit delegation from GA is necessary before municipality can act and "such powers, being delegated, should be strictly construed." See Bertrand v. Di Carlo, 304 A.2d 658, 660 (R.I. 1973). If matter is local concern, then the municipality is free to act unless the GA has passed valid legislation to preempt local action. See Town of Warren v. Thornton-Whitehouse, 740 A.2d 1255 (R.I. 1999).

Discussion:

- Has the Court gotten it right on these issues of what is statewide and what is local? Are there certain areas that Court held is statewide that could use more local control (e.g., education or business regulation)?
- Are there areas that the Court has indicated are local that may be more appropriately addressed on a statewide level (e.g., municipal employee pension plans)?
- Are there areas where the General Assembly has delegated authority to municipalities, but should not? Or has not delegated authority but should? Are there areas where the General Assembly should preempt local control?

Manner of allocating home rule authority - council/mayor, etc.

38 RI municipalities have a municipal charter (only Scituate does not). 36 have home rule charters, Warwick and North Providence have legislative charters. All of those charters contain language in one of the first few sections along the lines that enumerated powers are not exclusive and that the municipality, in addition to any enumerated powers, “shall have and may exercise all powers which, under the constitution of this State it would be competent for this Charter specifically to enumerate.” This ensures that the municipality doesn’t prohibit itself from doing anything the court determines is a local concern.

Of those 38 municipalities, 26 charters allocate all the powers of the Town, unless otherwise provided, to the Town Council. This means that in those 26 municipalities, if there is a matter of local concern that is not addressed by statute or assigned to some other entity, then the Council has authority over that issue. 13 home rule municipalities split home rule authority between elected council for legislative authority and elected administrator or mayor for executive authority (CF, Cra, Cumb, EP, Jo, Lin, NP, NS, Paw, Prov, Warw, Woo, Bris). Home rule municipalities are free to devise their own form of government, provided, however, Art. XIII, Sec. 3, provides that “every city and town shall have a legislative body composed of one or two branches elected by vote of its qualified electors.”

Ratification by General Assembly - purpose and effect

No provision of a home rule charter that addresses a matter of statewide concern becomes effective unless the charter addresses the issue explicitly and the General Assembly expressly ratifies it through legislation. See, e.g., Royal v. Barry, 160 A.2d 572, 575 (R.I. 1960)(“[N]o provision affecting education contained within a home rule charter, so called, can effectively regulate the conduct of school committees as agents of the state unless expressly validated by an act of the general assembly.”). If a charter provision is expressly ratified by the General Assembly, then it is treated as “a special act” with regard to that municipality that “takes precedence over any inconsistent provisions of the general laws.” Local No. 799, Intern. Ass'n of Firefighters AFL-CIO v. Napolitano, 516 A.2d 1347 (R.I. 1986).

Discussion:

- Should a municipal charter put limitations on the legislative authority of the local municipal council, or should it leave it up to state and federal law to limit that power? If so, what types of limitations on Council power are appropriate for a charter?
- Is it preferable to put the executive authority of the municipality in a separate elected official from the Council? Or, is it better to have a manager appointed by the Council? What are the benefits and drawbacks?
- In practice, is General Assembly ratification of the charter largely perfunctory? Does the GA always rubberstamp a charter, or are there times when there has been push back?

Limits on General Assembly authority over home rule municipalities

General Assembly may only enact legislation regarding a home rule municipality if either (1) applies alike to all cities and towns and does not affect the form of government of any city or town (see Moreau v. Flanders); or (2) effective only upon approval by a majority of the qualified electors of the said city or town voting at a general or special election. See McCarthy v. Johnson, 574 A.2d 1229 (R.I. 1990) (General Assembly could not pass special law extending SoL for one litigant to sue Newport absent approval by Newport voters).

Procedure for adoption and amendment

>Adoption, Art. XIII, Sec. 6, petition by 15% of qualified electors submitted to local legislative body; after canvassing authority validates signatures, within 2 months special election with question: “Shall a commission be appointed to frame a charter?” along with election of 9-member Charter commission. If question approved, 9 highest vote getters frame the local charter. With one year of creation of CC, draft charter is submitted to the local voters to be either approved or rejected (Art. XIII, Sec. 7).

>Amendment, Art. XIII, Sec. 8, local legislative body may submit proposed amendments to the Charter to the local voters for approval. If approved by voters and a matter of local concern, amendment effective as soon as approved by voters. If approved by voters and a matter of statewide concern, not effective until ratified through General Assembly legislation.

Once Charter is initially adopted, it may only be amended through amendments proposed by the council and approved by voters. The method of a 15% elector petition and elected charter commission is no longer available at that point to submit a charter to the voters without council approval. See Viveiros v. Town of Middletown, 973 A.2d 607 (2009).

Discussion:

- Are there examples when GA passed legislation that should have required approval from the local electorate, but was not sought? 195 Commission? Special town-specific taxing statutes? Special local exemptions from liquor licensing laws?
- Instances where GA arguably affected form of government: Providence School takeover? Central Falls receivership?
- How does the inability of the GA to alter the form of municipal government alter home rule municipality relationship with the state?
- In the three non-home rule municipalities, is there any political pressure to obtain home rule status?
- Is there a benefit from only allowing vote on amendments proposed by the Council? Should there be other means to propose amendments to voters? Elector petition? Elected charter review commission?

Charters v. ordinances

When considering whether to amend a municipal charter, it is important to ask if subject matter of the amendment is something that is more appropriately regulated through a municipal ordinance. Passing, and repealing, an ordinance can be done relatively easily by vote of the municipal council. This allows the municipality more flexibility to try out a particular policy and, after implementing the policy, amend or repeal the policy if it isn't working. The charter, on the other hand, may only be amended by vote of the municipal electorate. Therefore, when a certain policy is mandated by the charter, and that policy does not work out when implemented, it becomes much more difficult to change that policy than if the policy was only implemented by an ordinance.

Charter commission

Charter commission is 9-member nonpartisan body elected to frame the original charter and submit it to the voters. Many municipalities have provisions in their charters for charter review commissions, either elected or appointed, to periodically propose amendments to charter. However, these commissions can only propose amendments to the council, which can then choose whether to send the amendments to the voters. Once a charter is initially adopted, charter review commission does not have authority to send proposed amendments directly to voters.

Best practices for charter amendments - ballot questions

When presenting a ballot question to the voters on a proposed charter amendment, the question should strive to communicate clearly and succinctly what the amendment is about in every relevant detail. As proposed charter amendments become more extensive and/or complicated, it becomes more difficult to strike a balance between providing too much information and providing too little information. Provide too much information and you overload the voter with a multitude of complicated questions. Alternatively, if you try to sum up complicated amendments succinctly and provide too little information, the electorate may vote on an amendment without being informed of some relevant detail. The only sure way to successfully balance these interests is to not propose too many charter amendments to the electorate at one time.

Discussion:

- What types of things are better dealt with through the Charter? What types of things are better dealt with by ordinance? Are there certain instances when you want to take flexibility away from the municipal council and bind the Town to a specific policy? When is council flexibility more appropriate?
- Is it good policy to have the municipal charter periodically reviewed by a charter review commission? Or, does it lead to unnecessary amendments?
- How should a CRC be selected? Council? Executive? Elected?
- What makes for a good CRC member? How should a CRC function?
- What details are okay to omit when drafting a ballot question? What details must be included?
- How much information should be given to the electorate on any given ballot? When is the ballot overloaded?
- What is a good technique for summarizing complicated charter amendment into a succinct ballot question?

Stats on charters and update from 2018 election

http://www.municipalfinance.ri.gov/documents/resources/Home_Rule_Charter_Publication.pdf

*Scituate - still the only community in RI without a charter

Municipality	# of Charter Amendments Proposed	# of Charter Amendments Approved	Approval Rate
Barrington	3	3	100%
Central Falls	6	6	100%
Cumberland	7	7	100%
Little Compton	3	3	100%
Middletown	10	10	100%
North Kingstown	2	1	50%
North Smithfield	9	8	89%
Tiverton	7	2	29%
Warren	2	0	0%
Westerly	3	3	100%
Total:	52	43	83%

- Barrington- 3, all approved
 - Remove set date/time for the first meeting of newly-elected council and eliminate the monthly meeting requirement
 - DPW maintenance duties to include School Dept. buildings
 - Increase membership of Cemetery Commission
- Central Falls - 6, all approved
 - Add Code of Ethics (previously in Code of Ordinances) to Charter
 - Requirement for City to make translations of all City documents accessible in any language
 - Recall provision for Council members
 - Quorum for Council set at 4, to clarify Charter changes from 2012
 - Reserve/rainy-day fund created
 - Requirement for City to make annual pension fund payments, 99% of ARC

- Cumberland - 7, all approved
 - Term and term limits of elected officials
 - Term of mayoral appointments
 - Mayor to notify Town Council of appointments
 - Term of Chief of Police/Rescue Director
 - Legal Counsel for Town
 - Updating Dept. of Rescue Services
 - Misc. Amendments
- Little Compton - 3, all approved
 - Financial procedures
 - Town officials
 - Town officials
- Middletown - 10, all approved.
 - Confirm Council's power to appoint alternate municipal judges in the event of vacancies
 - Allow duties of Tax Collector and HR Manager to be separate from duties of Finance Director
 - Require Town Engineer be a registered professional engineer
 - Clarify process for amending and reviewing Charter
 - Require two signatures for School Dept. purchase vouchers by making School Committee clerk a member of the School Committee
 - Make appointment of various officials optional [multiple questions]: Deputy Town Clerk, Deputy Police Chief, Deputy Fire Chief, Deputy Finance Director, Town Engineer
- North Kingstown - 2 proposed, 1 approved
 - Rejected: Change term of Council members from two years to four years
 - Approved: Town Council to appoint successor to vacant seat on School Committee
- North Smithfield - 9 proposed, 8 approved
 - Rejected: change form of government from elected Town Administrator to Appointed Town Administrator
- Tiverton - 7 proposed,
 - Rejected: questions 5, 6, 7, 9, 10
 - Passed: 4, 8 - questions on vacant positions and non-substantive amendments
- Warren - 2 proposed, 2 rejected
 - Rejected: eliminate requirement that 'informative summary' of proposed ordinances be published in newspaper ad
 - Rejected: eliminate publication requirement for final adopted budget
- Westerly - 3 proposed, 3 approved
 - Manner of filling vacancies on Town Council
 - Eliminate redundant local ethics commission
 - Clarify that only the Town Manager may appoint and remove employees, and clarify the distinction between Town and School financial officers

During the November 6, 2018, General State Election, a total of 52 proposed amendments to the Charters in 10 of the State's 36 Home Rule cities and towns were on the local ballots. The number of proposed amendments varied from municipality to municipality. While 5 cities and towns (Barrington, Little Compton, North Kingstown, Warren, and Westerly) had no more than 3 proposed amendments on their ballots, 5 other cities and towns (Central Falls, Cumberland, Middletown, North Smithfield, and Tiverton) had 6 or more. A total of 43 of the proposed amendments (or 83%) were approved by the voters in the respective cities and towns.

Excerpt below reprinted from:

http://www.municipalfinance.ri.gov/documents/resources/Home_Rule_Charter_Publication.pdf

During the November 6, 2012, General State Election, a total of 73 proposed amendments to the charters in 15 of the State's 36 Home Rule cities and towns were on the local ballots. The number of proposed amendments varied from municipality to municipality. While 5 cities and towns (Exeter, Johnston, Richmond, West Greenwich and Woonsocket) had only 1 or 2 proposed amendments on their ballots, 7 towns (Central Falls, Foster, Middletown, Narragansett, Portsmouth, Providence and Westerly) had 5 or more. A total of 69 of the proposed amendments (or 95%) were approved by the voters in the respective cities and towns.

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