

**PART I**  
**FORM AND STRUCTURE OF THE MINNESOTA CITY**

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**CHAPTER 4: THE HOME RULE CHARTER CITY**

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# Chapter 4

## The home rule charter city

Minnesota's two basic types of cities are home rule charter cities (operating under a local charter) and statutory cities (operating under the statutory city code).

This chapter will examine the organization and general powers of the home rule charter city. The following topics will be discussed:

- I. Distinction between home rule cities and statutory cities**
- II. The home rule charter**
- III. General powers of a home rule charter city**
- IV. Conflict between state laws and home rule charters**
- V. How charter cities should use the Handbook**

### **I. Distinction between home rule cities 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. 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, and is not based on differences in population, size, location or any other physical feature.

[Minn. Const. art. XII, § 4.](#)  
[Minn. Stat. §§ 410.04-410.33.](#)

The Minnesota Constitution permits the Legislature to establish home rule charter cities, counties, and other units of local government. State law enacted under this constitutional authority authorizes cities to adopt home rule charters.

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. Consequently, voters in home rule cities have more control over their city's powers.

[Minn. Stat. § 410.33.](#)  
[Minn. Stat. ch. 412.](#)

State law provides that if a charter is silent on a matter that is addressed for statutory cities by Chapter 412 or other general law, and general law does not prohibit the city charter from addressing the matter or expressly provide that a city charter prevails over general law on the matter, then the home rule charter city can apply the general law on the matter.

Charters, therefore, are of interest to statutory cities when they encounter special problems that cannot be solved under general city laws. If a statutory city finds itself in such a situation, it can either request the Legislature to change the city code or adopt a special law applying to that specific city, or it can become a home rule city with a home rule charter that specifies its powers. The voters must approve the charter in a local election.

## II. The home rule charter

Home rule charters are, in effect, local constitutions. State laws give cities a wide range of discretion in the contents of a charter when one is adopted. The charter may provide for any form of municipal government, as long as it is consistent with state laws that apply uniformly to all cities in Minnesota.

Minn. Stat. § 410.16.  
See Handbook Chapter 1.  
See also League research memo *Charter and Election Data for Minnesota Cities* (390c.1).

The four forms of government home rule charter cities in Minnesota have used are: weak mayor-council, strong mayor-council, council-manager, and commission.

The weak mayor-council plan is the most predominant. This form is used by 73 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 than those of any other member of the council. No individual councilmember holds any specific administrative powers.

The strong mayor-council plan is not very common in Minnesota. This plan is used by only four home rule charter cities. 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 function of the council is to legislate and set policies. A charter can alter any of these features.

Thirty of the home rule cities in Minnesota have a council-manager form of government. Under this form, the council has policy-making and legislative authority, but administration of the government is the responsibility of a manager who answers directly to the council. Here again, the home rule charter can change this plan.

The commission form of organization has never been very popular. Over the years, only a few home rule cities have followed this form. Today, no home rule city in Minnesota uses the commission form; no statutory city has ever used it. In a commission city, 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 charter can also alter this form.

Any city may adopt a home rule charter. Of the 853 cities in the state, 107 now operate under a voter-approved home rule charter.

## **A. Advantages of a home rule charter**

The home rule charter form of city government has advantages as well as disadvantages. Briefly, the advantages of home rule include the following:

- Every home rule charter city may have the form of government and the range of local powers and functions desired by city residents. Residents of the city draft the charter locally. The electors of the city adopt it. Changes that are needed in the local government can occur locally instead of waiting to propose a new law when the Legislature is in session.
- The entire home rule process educates the voters of the city. Some voters work on charter commissions. All voters must learn about the charter and amendments since they usually may vote on proposed changes.
- A city charter may cover many functions and procedures, or it may be as simple as the statutory city form of government. Subject to state law, a home rule city, unlike a statutory city, has the power to make changes to fit its own needs by amending its charter. If state law is silent on a subject, local citizens may assume powers for their city by including those powers in their charter. Likewise, citizens may include limitations that are more stringent than those in the general state laws. For example, several 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.
- A charter may provide for initiative and referendum, recall, and election of council members by wards.

## **B. Disadvantages of a home rule charter**

Disadvantages of home rule charters may include the following:

- The experiences of other cities concerning the application of a charter or of the statutory city law are of little direct help to the home rule charter city. For example, the Supreme Court or the attorney general can give a ruling concerning a statutory city that, in most instances, will be equally applicable to all other statutory cities in the state. Rulings affecting a home rule charter usually concern only those cities that have very similar charter provisions.
- Poor local drafting of the charter may be a problem. A city can minimize this potential difficulty by using model charters and relying on competent professional advice.

- Anyone looking for the applicable law relating to a home rule charter city must consult not only the statutes, but also the particular home rule charter. Only a few collections of home rule charters exist. When seeking advice, an up-to-date copy of a city charter is of utmost importance to ensure the advice is accurate.
- The cost of preparing a home rule charter should be relatively minor. The smaller the community, the larger the cost in proportion to population.
- The process for amending a charter is often time-consuming and cumbersome, and the procedure for abandoning a charter may also be complicated.
- Charter amendments can be difficult to pass, especially when they are controversial. Sometimes supporters or opponents of the proposal, in order to bypass local opposition or to avoid dividing the community, go to the Legislature for a solution. This action tends to defeat the original purpose of adopting a charter.

### **C. Essentials of a good home rule charter**

Because of the difficulty in amending and abandoning a home rule charter, the charter should deal with fundamentals and give the city council the authority to provide more detailed regulations through ordinance. Simplicity and brevity are essential to a good charter. A charter should be brief enough to be read in a reasonable amount of time. Provisions should be simple and clear in order to avoid the possibility of more than one interpretation.

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

A good city charter provides for a workable, responsive organization of the city government. It is simple so that all citizens and officials understand it. Its design eliminates red tape and makes city government more effective by reducing the number of working parts. It encourages and rewards expertise and efficiency in the administration of the city.

A city should have only a few 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. Council members should hold office for fairly long terms, up to four years, in order to gain experience. State law mandates that most council terms be four years, although a two-year mayoral term is allowed.

If possible, the city should centralize responsibility for administration in one person: a chief administrative officer. All advisory boards should report directly to the city council.

## **D. Adopting and amending a home rule charter**

See League research memo *A Model Charter for Minnesota Cities* (100a.5).

See [League website for further information on the Charter Assistance Service](#)

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.

## **E. The charter commission**

[Minn. Stat. § 410.05, subd. 1.](#)

There are three ways to appoint a charter commission:

- First, the district court, acting through the chief judge of the district in which the city lies, may appoint a charter commission. The court will probably not do this, however, until city residents or local civic organizations express some 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 council of any city may, by resolution, request the appointment of a charter commission. This action would require the district court to appoint commission members.

### **1. Appointment of commission members**

[Minn. Stat. § 410.05, subd. 1.](#)

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 council members may serve on charter commissions. 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. 3. Having determined to make the appointments or having been directed by petition or council resolution to do so, the court listens to information from interested citizens concerning 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. Appointments are for staggered or overlapping terms. Of the initial appointments, half the members plus one serve two-year terms, and the other half serve four-year terms. Thereafter, the chief judge appoints new members every two years and fills vacancies as they occur.

After the chief judge makes the appointments, the district court clerk notifies the appointees, who have 30 days to file their written acceptances and oaths of office with the district court clerk.

Minn. Stat. § 410.05, subd. 1. Charter commissions can have between seven and 15 members. The court determines the size, unless a petition of the voters or resolution of the city council specifies the size of the commission. Any city having a home rule charter may amend the charter to fix the size of the commission to be between seven and 15 members.

Minn. Stat. § 410.05, subd. 2. Once appointed, a charter commission becomes a permanent body. Its membership changes from time to time, but the commission goes on indefinitely. Failure of the body to meet or to function does not end its existence. 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.

## 2. Vacancies

Minn. Stat. § 410.05, subd. 2. The commission may experience vacancies in various ways, as by death, inability to perform duties, resignation (including failure to file the acceptance and oath of office) or removal from 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. The chief judge fills all vacancies by appointment for the unexpired term. The commission should always contain its full complement of members.

### 3. Functions of a charter commission

Minn. Stat. § 410.05, subd. 5.

Unless the charter commission of a statutory city determines that a home rule charter is not necessary or desirable and discharges itself by a vote of three-fourths of its members, the city is never legally without a charter commission. The commission's function is to continue 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. § 410.05, subd. 4.

Minn. Stat. § 410.12, subd. 1.

If voters reject the first charter proposed by a commission, the commission may continue to submit proposals until the voters finally adopt one. Thereafter, the commission may submit new charters or amendments to the old charter, whenever it sees fit.

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 at least twice a year, and keep its organization intact should any emergency arise.

### 4. Drafting the charter

Minn. Stat. § 410.05, subd. 2.

Within 30 days after its appointment, the 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. § 410.07.

In a city without a home rule charter, the new charter commission must deliver to the city clerk as soon as practicable, a report that states a home rule charter is not necessary or desirable, or the draft of a proposed charter. A majority of the members of the commission must sign the report or the charter draft.

Minn. Stat. § 410.06.

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.

See League research memos *Charter and Election Data for Minnesota Cities* (390c.1); *A Model Charter for Minnesota Cities* (100a.5); [Handbook Chapter 1](#); and the National Civic League's *Model City Charter, Eighth Edition* (2003).

[See League website for further information on the Charter Assistance Service](#)

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 Charter Assistance Program counsel will examine and comment on an existing charter, charter draft or amendment. Almost all proposed charters have been sent to the League for this kind of review and comment.

The commission and its committees should secure 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, council members, and city officials may have special insights into the merits or practicality of particular proposals.

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.

## 5. The charter election

[Minn. Stat. § 410.10, subd. 1.](#)

After receiving the signed draft charter, the clerk notifies the city council of its receipt and reminds the council to submit the charter to an election by the voters. If the council fails to do this, the court may order it.

The council has several options regarding the time 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.

Minn. Stat. § 410.10,  
subds. 1, 2.

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 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.

**a. The charter campaign**

Charter commission members have differed in their views of the role of the charter commission and its members in the charter campaign. 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 on the 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 an appropriate role. Surely no other group is likely to know more about what the charter contains and why, and none 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 to disarm opposition. Throughout its entire proceedings, the commission should inform the public of its actions.

A.G. Op. 442-A-20 (Jul. 18, 1927); A. G. Op. 442-A-20 (Jul. 10, 1952); A. G. Op. 476-B-2 (Apr. 29, 1954).

Charter commissions should keep in mind that expenditure 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.

**b. Form of ballot, required majority, certification**

Minn. Stat. § 410.10,  
subds. 1, 3.

The city covers the expense of a charter election. The ordinary rules of the conduct of elections apply, but the statutes add the following provision: “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 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 place a cross to express a choice). If any part of such charter be submitted in the alternative, the ballot shall be so printed as to permit the voter to indicate a preference in any instance by inserting a cross in like manner.”

Minn. Const. art. XII, § 4.  
Minn. Stat. § 410.11.  
Minn. Stat. § 410.121.  
Minn. Stat. § 410.04.  
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The Constitution provides the Legislature may set, by law, the majority necessary to adopt a proposed charter. 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 to amend a charter to change 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.

**c. Filing copies of the charter**

Minn. Stat. § 410.11.

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 the League can use one or two copies to send on loan to other Minnesota charter commissions considering new charters.

In addition, if the city has a web site, it may want to consider posting an electronic copy of the charter for increased public access.

Minn. Stat. § 410.11.

Once the city clerk files the copies and certificates, the new 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 charter may 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.

## F. Amendments to the charter

[Minn. Stat. § 410.12.](#)

Amendments may originate in one of five ways:

The charter commission may propose amendments at any time.

[A.G. Op. 59a-11 \(Dec. 30, 1981\).](#)

[Davies v. City of Minneapolis](#), 316 N.W.2d 498 (Minn. 1981);  
[Haumant v. Griffin](#), 699 N.W.2d 774 (Minn.App., 2005).

[Minn. Stat. § 204B.071.](#)

A number of registered voters, equal to 5 percent of the total votes cast at the last state general election in the city, may sign and file a petition with the charter commission. This percentage of voters cannot be changed by a provision in a charter. The petition must state the proposed amendment to the charter. The commission must submit the petition to popular vote. 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. 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.

[Minn. Stat. § 410.12, subd. 5.](#)

The city council may propose an amendment by ordinance subject to charter commission review. The council submits the ordinance proposing an amendment to the commission, which has 60 days for review. If the commission formally requests an extension, the council may extend this review period by an additional 90 days. After the review period, the commission returns the amendment or its own substitute amendment to the council. The council submits to the voters either the amendment it originally proposed or the commission's substitute amendment.

Minn. Stat. § 410.12, subd.  
7.

The charter commission may recommend the council amend the charter by ordinance. In this case, 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. The notice must 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. The ordinance proposing the amendment is subject to the same publication requirements as other ordinances. The ordinance does not become effective for 90 days. During the first 60 days, registered voters equal to 2 percent of the votes at the last state general election or 2,000 voters, whichever is less, may submit a petition forcing 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.  
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In cities of populations less than 10,000, the council may propose amendments by ordinance without submitting them to the charter commission. Four-fifths of the council members 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.

## 1. The vote on an amendment

Minn. Stat. §§ 410.10,  
410.12, 410.04.

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, subd.  
1.

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 12 weeks before the general election.

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. The League of Minnesota Cities Charter Assistance Program would also appreciate receiving 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 web site to keep the online charter up-to-date.

## 2. New or revised charter

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.

## G. Abandoning a home rule charter

[Minn. Const. art. XII, § 5.](#)

[Minn. Stat. § 410.30.](#)

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 all 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.

## III. General powers of a home rule charter city

Concerning the form of government of a home rule charter city see [Minn. Stat. § 410.16](#) and [Handbook Chapter 1](#).

See League research memo *A Model Charter for Minnesota Cities* (100a.5) Chpt. 1, sec. 1.02; and National Civic League's *Model City Charter, Eighth Edition* (2003) Art. 1, sec. 1.01.

*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. 551, 16 N.W.2d 779 (1944).

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 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.

## A. Broad grant of powers

The following list of powers of home rule charter cities is not complete or all-inclusive. Many powers of charter cities are discussed in more detail in other chapters of the *LMC Handbook*.

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.

*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).

Minn. Stat. § 410.33.

Minn. Stat. ch. 412.

A city, however, even one organized under a city charter, has no inherent powers—only such powers as 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.

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.

### 1. Taxes

See *Handbook Part VI*.

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.

Minn. Stat. § 275.75.

For example, the Legislature allowed charter cities, for the years 2004 and 2005, 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, state imposed levy limits still applied.

## 2. Finance

See [Handbook Chapter 21 on Budgeting](#) and [Chapter 22 on the Property Tax Levy](#).

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. The charter may regulate the payment of claims. The charter also may 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.

[Minn. Stat. § 410.325](#).  
See [Handbook Part VI](#).

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 restrict the purposes for which the city may issue bonds, and it can make the procedure easier or more difficult. The charter may authorize the city to borrow money directly from banks and other lending institutions, rather than issuing bonds or certificates.

## 3. Utility regulation

See [Handbook, Chapter 12](#).  
[Minn. Stat. § 410.09](#).

The Minnesota Public Utilities Commission and the Department of Commerce regulate the service and rates of private gas, electric and telephone utilities. Charters may require 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.

## 4. Municipal utilities

[Minn. Stat. § 412.321](#).

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.

## 5. Ordinance procedure

[Minn. Stat. § 412.191](#),  
subd. 4.  
[Minn. Stat. § 410.20](#).

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

### a. 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.

[Minn. Stat. § 410.20.](#)

*Hanson v. City of Granite Falls*, 529 N.W.2d 485 (Minn. Ct. App. 1995); *Housing & Redev. Auth. v. City of Minneapolis*, 293 Minn. 227, 198 N.W.2d 531 (Minn. 1972); *Oakman v. City of Eveleth*, 163 Minn. 100, 203 N.W. 514 (1925). See also [A.G. Op. 858 \(Oct. 26, 1970\)](#); [A.G. Op. 858 \(August 5, 1970\)](#). But see *City of Cuyahoga Falls v. Buckeye Comty. Hope Found.*, 538 U.S. 188, 123 S. Ct. 1389 (U.S. 2003); [A.G. Op 185b-2 \(Mar. 8, 1962\)](#).

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.

## 6. Personnel

In home rule cities, the charter may set procedures for appointments and removals 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.

## 7. Contracts

[Minn. Stat. § 471.345.](#)

[A.G. Op. 59-a-15 \(Aug. 22, 1969\)](#).

See [Handbook Chapter 23](#).

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 is 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.

## 8. Tort liability

See [Handbook Chapter 18](#).

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 extend or curtail this liability for torts to any extent.

## 9. Special assessments

See [Handbook Chapter 25](#).

[Minn. Const. art. X, § 1](#);  
[Minn. Stat. ch. 429](#).

[Minn. Stat. § 429.111](#).

[Minn. Stat. § 429.021](#),  
subd. 3.

[Minn. Const. art. X, § 1](#).

Both statutory and home rule cities may finance almost any type of local public improvement 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.

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

Some charters with special assessment provisions that differ from state law authorize the city council to choose between utilizing the charter provisions or state law when imposing special assessments. A recent 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. 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.

## 10. Real estate

See [Handbook Chapters 14](#) and [23](#).

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 and approval of the voters, but a charter may impose such restrictions.

## 11. Elections

[Minn. Stat. § 205.02](#), subd. 2.

[Minn. Stat. § 205.07](#), subd. 1.

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

[Minn. Stat. § 410.16](#).

State statutes regulate many phases of election procedure, but others are 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. A charter may not impose term limits.

The charter may use proportional representation as a method of election 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.

**a. Recall**

Minn. Stat. § 410.20.

See Minn. Const. art. VIII, § 6 and *Jacobsen v. Nagel*, 255 Minn. 300, 96 N.W. 2d 569 (1959).

Home rule charter cities have some limited authority to provide for recall elections in a charter. The Minnesota Constitution and court decisions have restricted recall of elected city officials *only* to cases of serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office *or conviction* during the term of office of a serious crime. No recall system exists in statutory cities.

**12. Accounting**

Minn. Stat. § 412.222.

Minn. Stat. §§ 6.54 and 6.55.

Under the law, statutory cities may employ a public accountant or the state auditor to perform an audit. By charter, cities may require an audit each year or periodically, and they may designate a person 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.

Minn. Stat. §§ 471.695 to 471.698.

See Handbook Part VI.

State law requires all cities 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 only a minimum of statutory restriction. In statutory cities, the law is more restrictive on this subject.

**13. Regulation and licensing of activities**

See Handbook Chapters 11 and 12.

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 use an all-powers provision in its charter to license or regulate activities within its borders. Without an all-powers or other broad grant of authority, a charter city must find a specific charter provision or state law authorizing the regulation.

**14. Removal of council members by the council**

Minn. Stat. § 351.02.

A.G. Op. 59a-30 (Jul. 24, 1996).

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

## B. Delegation of powers

[A.G. Op. 624a-3 \(June 28, 1999\)](#); [A.G. Op. 1001-a \(Sept. 15, 1950\)](#).

*Muhring v. School District No 31*, 244 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).

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

## IV. Conflict between state laws and home rule charters

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

### A. General rule

[Nordmarken v. City of Richfield](#), 641 N.W.2d 343 (Minn. Ct. App. 2002); [Sinclair Oil Corp. v. City of St. Paul](#), 2002 WL 1902920 (Minn. Ct. App. 2002); [Columbia Heights Relief Ass'n v. City of Columbia Heights](#), 305 Minn. 399, 233 N.W.2d 760 (1975).

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

### B. Identifying a conflict

[Mangold Midwest Co. v. Vill. of Richfield](#), 274 Minn. 347, 143 N.W.2d 813 (1966); [State v. Kuhlman](#), 729 N.W.2d 577 (Minn., 2006); [State v. Burns](#), A05-2554 (Minn. Ct.App., 2007) (*unpublished decision*)

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:

- Is there a court case or attorney general's 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, the city should seriously consider the reasoning behind such an opinion. The *LMC Handbook* attempts to identify all court decisions and attorney general opinions that deal with charter and state law conflicts in order to assist charter city officials in determining what state laws apply to their city.

Minn. Stat. § 410.015.

- 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 before that time, 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, mandatory laws enacted by the Legislature prior to July 1, 1976, for the protection of the public probably apply to all cities.

### C. Resolving conflicts

*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.,2007); *State v. Burns*, A05-2554 (Minn. Ct.App.,2007) (unpublished decision)

Even if a general state law applies to a charter city, 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.

## V. How charter cities should use the LMC Handbook

This *Handbook* is for both statutory and home rule charter cities. Each of the following chapters includes a section on how the chapter relates to charter cities. Because of the differences in city charters, it is difficult to generalize about the ways in which they are affected by state laws. The *Handbook* does mention when statewide laws and rules, court decisions, and attorney general opinions apply to charter cities.