

Charter Amendment—HRC Legislative Body Resolution

Introduction

Home rule cities can amend their charters in accordance with procedures found in the Home Rule City Act. MCL 117.21-117.25. Note: The method of amending a city charter is distinct from the charter revision process MCL 117.18

The amendment process may be used to change details in the charter. Examples of changes that can be made by amendment include: increasing or decreasing the number of councilmembers, changing the clerk or treasurer position from elected to appointed, setting the purchasing limit that can be spent before the municipality is required to establish a bid process, establishing pension plans and the range of municipal matters, including having some or all councilmembers elected by ward or at large, having or deleting initiative and referendum for ordinances, election of the mayor at large or by the council from among its members, and establishing or deleting boards and commissions.

However, it is not permissible for an amendment to change the form of government (e.g., providing for a council-manager system in place of a mayor-council form, curtail the term of the current city manager, provide for a radical change in governance such as a requirement for voter approval of each ordinance). Nor should a charter amendment address limitations on the number of marijuana establishments or their prohibition as MCL 333.27956 specifically states that such action can occur by initiated ordinance. Additionally, after September 11, 2011, a city charter or ordinance may not include any minimum staffing requirement for city employees.

A proposed amendment must be confined to one subject. If a subject embraces more than one related proposition, each proposition must be separately stated to afford electors the opportunity to vote for or against each proposition. MCL 117.2(3)

Proposal

Charter amendments may be proposed in one of two ways, either by resolution of 3/5 of the members of the city's governing body (MCL 117.21(1)) or by initiatory petition signed by at least 5% of the qualified and registered city electors and obtained not more than 1 year before filing with the city clerk. (MCL 117.21(1), 117.25)

Publication

The proposed charter amendment must be published in full, with existing charter provisions which would be altered or abrogated by the amendment (MCL 117.21(2)). The manner of publication shall be as prescribed by the city governing body (MCL 117.23(1)). The publication requirement may be met by setting forth the amendment and the existing sections altered or abrogated in:

- the resolution proposing the amendment, if proceedings are published; or
- the election notice; or
- a separate publication.

Submission to the Governor

Charter amendments must be submitted to the governor for review. The amendment should be submitted to the governor for approval for placement on the ballot at least 60 days before the deadline for filing the ballot language with the county clerk for placement on the ballot for the general or special election at which the council seeks to submit the proposed amendment for voter approval. However, even if the governor declines to approve a council-proposed amendment, the council by 2/3 vote may still submit a proposed amendment to the voters notwithstanding the governor's objections. And if the Governor does not approve an initiatory amendment the proposal still goes before city voters. MCL 117.22.

Ballot language

MCL 117.21(2) requires ballot language consisting of a true and impartial statement of the proposed amendment in not more than 100 words, not including the caption, in such language as shall create no prejudice for or against such amendment. The ballot language is prepared for printing on the ballot. However, since the Act requires that the text of the ballot language be submitted to the Attorney General for approval as complying with the Act, it is advisable that it be submitted for such approval at least 60 days before the deadline for filing with the county clerk the ballot language for placement on the ballot for the general or special election at which the council seeks to submit the proposed amendment for voter approval. (This latter requirement is not to be confused with the requirement for submission of the proposed amendment to the Governor).

Election Procedure

(a) Election Date. The amendment can be submitted either at a special or regular city election or general state election (but not at a primary election) to be held not less than 60 days after adoption of the council resolution to submit the amendment to a vote of the electors (MCL 117.21). See also *Millard ex rel Reuter v Bay City*, 334 Mich 514 (1952) regarding the absence of authority in MCL 117.21 (1) for submitting a proposed amendment for voter approval at a primary election.

(b) Election Notice. If the proposed amendment is to be submitted at a regular or general election, notice of the proposition to be voted on will be added to the regular election notice, by including a brief description of the proposal(s) along with the location where an elector can obtain the full text (MCL 168.653a). The publication of the election notice must be at least 7 days before election day, while the publication of the notice of last day of registration must be at least 7 days before the last day for receiving registrations. (See Appendix C for suggested election notice form).

(c) Form of Ballot. The form of ballot customarily is established by the resolution of the governing body calling for the election on the proposal to amend the charter.

The proposed charter amendment in full shall be posted in a conspicuous place in each polling place (MCL 117.21(2)).

Filing

If the amendment is approved by the electors, two printed copies must be filed within 30 days after the election with the Secretary of State and two copies with the county clerk, together with a statement certified by the city clerk of the vote for and against the amendment. Upon such filing, the amendment becomes effective unless a different date for taking effect is set forth in the amendment (MCL 117.24).

Resubmission

A proposed charter amendment defeated in an election may not be resubmitted to the electors for a period of two years (MCL 117.21(3)).

APPENDIX A

CHECKLIST

PROCEDURE FOR CHARTER AMENDMENT

PROPOSED BY GOVERNING BODY

MCL Reference

- | | |
|--------------|---|
| MCL 117.21 | 1. A resolution proposing the amendment and setting the date for election is adopted. requires a 3/5 vote of the members of the governing body. |
| MCL 117.22 | 2. City clerk sends copy of the proposed amendment to the Governor for approval. |
| MCL 117.21 | 3. City clerk sends copy of the “statement of purpose” of the proposed amendment to the Attorney General. |
| MCL 117.21 | 4. City clerk publishes proposed amendment in full with charter sections altered or abrogated, as directed by governing body. (This can be fulfilled in the Resolution, the notice of last day of registration, the election notice, or a separate publication.) |
| MCL 168.498 | 5. City clerk publishes notices of last day for registration (at least 30 days before the last day for receiving registrations). The notice shall include a caption or brief description of the ballot proposal, along with the location where the full text can be obtained. |
| MCL 168.653a | 6. City clerk publishes the election notice (at least seven days before the election). The notice shall include a caption or brief description of the proposal along with the location where the full text can be obtained. |
| MCL 117.21 | 7. Election day (at least 60 days after adoption of resolution). |
| MCL 117.24 | 8. City clerk will file two copies of the approved amendment with the Secretary of State and two copies with the county clerk (within 30 days after election day). |

APPENDIX B

SUGGESTED RESOLUTION FORM

Note: This form may be adapted to include more than one proposed amendment in the same resolution.

BE IT RESOLVED, by the city council of the city of _____, Michigan as follows:

1. By a 3/5 vote of its members-elect, pursuant to the authority granted by Public Act 279 of 1909, as amended, proposes [that section(s) _____ of the charter of the city of _____ shall be amended to read as follows:] or [that a new section(s) _____ be added to the charter of the city of _____, to read as follows:]

[Insert the section(s).]

Provisions of existing section(s) _____ of the charter of the city of _____ to be altered or abrogated by such proposal, if adopted, now read as follows:

[Insert the section(s) altered or abrogated in full.] with changes in red-line and strike-out format

2. The ballot language for each proposed amendment shall be printed on the ballot as follows:

Insert here the proposed ballot language for each proposed amendment in not more than 100 words (not counting caption lines such as City of X Proposed Charter Amendment No. ___ and a short identifier such as purchasing requirements, term of mayor, etc.)

Note: The ballot language may include a combination of declarative sentences and a question (such as “Shall the amendment as proposed be adopted?”) – or a question which provides the voter with a description of the proposed amendment and asks whether the voter favors its adoption.

[YES] [NO]

3. The city clerk shall transmit a copy of this resolution to the governor of the State of Michigan for approval of the proposed amendment and a copy of this resolution to the attorney general of the State of Michigan for approval of proposed ballot language for the proposed amendment, as required by law.

4. The proposed charter amendment shall be submitted to the qualified electors of this city at an election to be held in _____ on _____, and the city clerk is directed to give notice of the election and notice of registration in the manner prescribed by law.

5. The proposed amendment shall be submitted to the electors in the following format provided above in Section 2 of this resolution.

6. The proposed amendment shall be published in full together with the existing charter provision altered or abrogated by the amendment [as part of the notice of election] or [once in _____ newspaper not less than _____ days prior to the election.]

7. The canvass and determination of the votes of said question shall be made in accordance with the laws of the State of Michigan and the charter of the city of _____.

APPENDIX C

SUGGESTED FORM FOR ELECTION NOTICE

ELECTION NOTICE

To the qualified electors of the city of _____,

Notice is hereby given that a _____ election

(indicate whether regular or special)

will be held in _____, on _____ (date),

from 7 a.m. to 8 p.m. for the purpose of voting on the following proposals:

(list all proposals to be submitted to voters)

Proposal No. 1

Insert here the proposed ballot language from the resolution of the city council as approved by the Attorney General

[Insert the section or sections of charter in its proposed amended form.]

Provisions of existing charter to be altered by such proposal, if adopted, now reads as follows:

[Insert the section or sections abrogated or altered in full.]

Proposal No. 2

Insert here the proposed ballot language from the resolution of the city council as approved by the Attorney General

[Insert the section or sections of charter in its proposed amended form.]

Provisions of existing charter to be altered by such proposal, if adopted, now reads as follows:

[Insert the section or sections abrogated or altered in full.]

List of polling place locations _____

(clerk)

APPENDIX D

RESOURCES AND CONSIDERATIONS

- No. 1 ICLE, Michigan Municipal Law, August 2022, Chapter 3
- No. 2 Letter of August 30, 2021, from Alicia Moon, then Deputy Legal Counsel to the Governor, to Director of Elections Jonathan Brater, Michigan Department of State, providing notice of the deadlines in 2022 for the Governor’s review of proposed charters and charter amendments for placement on the ballot for voter approval—See in particular:
- “Starting in 2022, our office will not approve proposed charter amendments or revisions after 4 p.m. on the twelfth Tuesday before the election. (We will approve changes that fix scrivener’s errors for charter amendments and revisions already approved by the deadline.)”
- “We therefore strongly recommend submission of all proposed charter amendments to our office at least 60 days prior to the filing deadline and strongly recommend submission of all proposed charter revisions to our office at least 90 days prior to the filing deadline. We are requesting your assistance in notifying municipalities across Michigan of this policy and request.”
- No. 3 Letter of January 24, 2022, from John VanDeventer, then Chief Legal Counsel, Michigan Department of Attorney General to Director of Elections Jonathan Brater, Michigan Department of State, regarding reviews by the Attorney General of charters and charter amendments and the ballot language for amendments to city charters.
- No. 4 If there are any questions or concerns, the city attorney should contact the State Operations Division, (517) 335- 7573, about this process as early as is feasible. As time permits, Assistant Attorneys General in the State Operations Division are available for informal consultation regarding the wording of proposed resolutions for charter amendments. Such resolutions should include the text of each charter amendment (with strike outs and additions highlighted), and the text of the proposed ballot language for the proposed amendment. For such consultations, the city attorney should provide the text of the current charter in word-searchable format.