

SPECIAL CHARTER REVIEW COMMITTEE (2022-2023)

MONDAY MARCH 27, 2023 AT 5PM

LOCATION - HEARING ROOM

1. Open Meeting Law Statement
2. Pledge of Allegiance
3. Attendance
4. Public Comment
5. Minutes from MARCH 20, 2023
6. Discussion/Review of the following Charter Sections:
  - Section 3-8 Temporary Absence of the Mayor
    - Proposed Disability Clause Discussion
    - Discussion of MGL. Chapter 268A section 25
  - Section 3-10 Vacancy in the Office of Mayor
  - Section 4-3 Prohibitions
  - Section 6-5 Capital Improvement Program
  - Section 7-2 Preliminary Election Procedures
  - Section 8-5 Recall

**ADA Coordinator: Gary P. Howayeck, Esq. 508-324-2650**

Rene G Brown  
Chairperson



**Part IV** CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

**Title I** CRIMES AND PUNISHMENTS

**Chapter 268A** CONDUCT OF PUBLIC OFFICERS AND EMPLOYEES

**Section 25** SUSPENSION OF PERSONS UNDER INDICTMENT FOR MISCONDUCT IN OFFICE; NOTICE; COMPENSATION AND FRINGE BENEFITS; TEMPORARY REPLACEMENTS; REINSTATEMENT

Section 25. An officer or employee of a county, city, town or district, howsoever formed, including, but not limited to, regional school districts and regional planning districts, or of any department, board, commission or agency thereof may, during any period such officer or employee is under indictment for misconduct in such office or employment or for misconduct in any elective or appointive public office, trust or employment at any time held by him, be suspended by the appointing authority, whether or not such appointment was subject to approval in any manner. Notice of said suspension shall be given in writing and delivered in hand to said person or his attorney, or sent by registered mail to said person at his residence, his place of business, or the office or place of employment from which he is being suspended. Such notice so given and delivered or sent shall automatically suspend the authority of such person to perform the duties of his office or employment until he is

notified in like manner that his suspension is removed. A copy of any such notice together with an affidavit of service shall be filed as follows: in the case of a county, with the clerk of the superior court of the county in which the officer or employee is employed; in the case of a city, with the city clerk; in the case of a town, with the town clerk; in the case of a regional school district, with the secretary of the regional school district; and in the case of all other districts, with the clerk of the district.

Any person so suspended shall not receive any compensation or salary during the period of suspension, nor shall the period of his suspension be counted in computing his sick leave or vacation benefits or seniority rights, nor shall any person who retires from service while under such suspension be entitled to any pension or retirement benefits, notwithstanding any contrary provisions of law, but all contributions paid by him into a retirement fund, if any, shall be returned to him, subject to section 15 of chapter 32. The employer of a person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

A suspension under this section shall not, in any way, be used to prejudice the rights of the suspended person either civilly or criminally. During the period of any such suspension, the appointing authority may fill the position of the suspended officer or employee on a temporary basis, and the temporary officer or employee shall have all the powers and duties of the officer or employee suspended.

Any such temporary officer or employee who is appointed as a member of a board, commission or agency may be designated as chairman.

If the criminal proceedings against the person suspended are terminated without a finding or verdict of guilty on any of the charges on which he was indicted, his suspension shall be forthwith removed, and he shall receive all compensation or salary due him for the period of his suspension, and the time of his suspension shall count in determining sick leave, vacation, seniority and other rights, and shall be counted as creditable service for purposes of retirement.

### What is Home Rule?

Home Rule is sometimes thought of as a relatively recent concept and unique to Massachusetts, but its roots actually date back to the 1700s and its relevancy extends throughout the nation. Missouri was the first state to adopt a Home Rule provision in 1875, followed by California, Washington and Wisconsin between 1879 and 1898. In Massachusetts, Home Rule authority was granted to cities and towns in 1966. Today, almost all states have adopted Home Rule provisions which, to varying degrees, are intended to enhance self-governance for cities, towns and counties.

The American Revolution confirmed the rights of the people to govern themselves. However, as the mid-1800s approached, corporations were drawn into the debate, and distinctions were made between the rights of municipal corporations (i.e., cities and towns) and private corporations. In many higher court decisions, the right to self-rule came under attack as railroad companies, whose lawyers were well entrenched at the state level, faced resistance as they pushed to extend rail lines across town boundaries. Then, with emergence of the so-called Dillon Rule, the struggle ensued, in earnest, between advocates of local autonomy and standard bearers for state supremacy. In 1868, an Iowa Supreme Court Justice, John F. Dillon, put forward rules for interpreting the relationship between state law and local law when they came into conflict (*Clinton v. Cedar Rapids and Missouri River R.R.* - 24 Iowa 455, 1868). The intent and effect was to narrow the scope of municipal authority.

The Dillon Rule states that: "A municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words (from the state); second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation- not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation."

The United States Supreme Court adopted the Dillon Rule in 1907 (*Hunter v. City of Pittsburgh* - 207 U.S. 161, 178-79) stating: "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them ... The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it

with another municipality, repeal the charter and destroy the corporation ... In all these respects the state is supreme."

Under the Dillon Rule, Massachusetts municipalities were among those that were viewed as political subdivisions or creatures of the state. As a practical matter, this meant that cities and towns received their right to organize from the state and had no authority to act other than in ways granted by the General Court, or as implied by powers conveyed. Municipalities were permitted, in a limited way, to enact local laws provided the provisions were "not repugnant" to the state constitution, but all local laws were subject to annulment by the General Court.

With the adoption of Amendment Article 89 and M.G.L. Ch. 438 in 1966, Massachusetts created some separation from the Dillon Rule. In general, a city or town in the Commonwealth can exercise a power or function through the approval of its legislative body (town meeting, city council or town council) and its voters. They can exercise any power through the adoption of an ordinance, by-law or charter that the state legislature has the authority to delegate. In the strongest exercise of Home Rule rights, communities can enact charters (through a charter commission process), without state approval, in order to organize local government in a way that best meet the needs of their citizens.

However, there are significant limitations. Despite Home Rule, some local actions require approval of the state legislature. Others are allowed only through local acceptance of state statutes. In every instance, the legal doctrine of pre-emption prevails. That is, a provision of local law will stand only so long as it is not inconsistent with the state constitution or general laws. Lastly, specific constitutional language (Amendment Article 89, Section 7) reserves to the state sole authority to regulate elections; levy, assess and collect taxes; borrow money or pledge a municipality's credit; dispose of parkland; enact private or civil laws; and impose criminal penalties.

The initial responsibility to determine whether adopted local provisions may stand rests with the State Attorney General and specifically with the Municipal Law Unit within that office. As explained on the Municipal Law Unit website, "whenever a town adopts or amends its general by-laws or zoning by-laws, within 30 days of adjournment of town meeting, the Town Clerk is required to submit them to the Attorney General for review and approval. The Attorney General then has 90 days in which to decide whether the proposed amendments are consistent with the constitution and the laws of the Commonwealth. If the Attorney

General finds an inconsistency between the proposed amendments and state law, the amendments or portions thereof will be disapproved. The Municipal Law Unit is responsible for undertaking this review and for issuing a written decision approving or disapproving by-law amendments. The Municipal Law Unit does not, however, review proposed city ordinances.

In regard to charters, "whenever a city or town seeks to adopt or amend its charter pursuant to the Home Rule Procedures Act (General Laws, Chapter 438), the proposed charter or charter amendments must be submitted to the Attorney General for his opinion as to the consistency between the charter (or charter amendments) and state law. The Attorney General then has 28 days in which to make this determination. The Municipal Law Unit is responsible for undertaking this review and for issuing a written decision."

Clearly, Home Rule, or self-governance, exists in Massachusetts when a city or town adopts a charter through the approval of its legislative body and its electorate. Beyond this charter commission process, however, the extent of Home Rule is limited. Today, as municipalities struggle financially, they are more frequently seeking to generate new revenue sources, as well as to act on seemingly routine matters, only to find that they lack the requisite authority to do so.

For a city or town, the process of drafting, authorizing, filing and waiting for the approval of a special act creates financial, administrative and political burdens. For the Massachusetts Legislature, the sheer volume of special acts overwhelms the docket of each chamber and diverts time and attention from issues of global importance to the Commonwealth. According to the Massachusetts General Court website, during each annual session since 2001, approximately 70 percent of all legislation approved, or 230 new laws on average, have been special acts. Among requests, cities and towns must seek the State's permission to issue liquor licenses; to reorganize government or manage local elections; to reserve their money in special revenue funds; and to convey or lease certain property.

Ultimately, more than the Dillon Rule, it is the General Court's exclusive constitutional right to legislate on certain matters and, in particular, the doctrine of pre-emption that work to restrict local self-rule and to perpetuate the ongoing involvement of the state in municipal affairs.

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title VII** CITIES, TOWNS AND DISTRICTS

**Chapter 43BHOME** RULE PROCEDURES

**Section 1** Short title; definitions

**Section 2** Adoption, revision or amendment of existing charter

**Section 3** Petition for adoption and revision of charter; filing; objections

**Section 4** Order of governing body for submission of question of adoption or revision of charter; nomination and election of charter commission

**Section 5** Charter commission; procedure for nomination and election of members

**Section 6** Charter commission; number of members; election

**Section 7** Charter commission; organization; compensation and expenses of members

**Section 8** Charter commission; rules and regulations; personnel; funds; receipts and expenditures; office space and facilities; taxation and borrowing

**Section 9** Hearings before charter commission; reports of commission



<b>Section 10</b>	Amendments to charter previously adopted or revised under this chapter; procedure
<b>Section 11</b>	Proposed charter or charter revision; submission to voters; ballot; copies of final report or proposed amendment; adoption of alternative or conflicting provisions
<b>Section 12</b>	Charter and charter amendments and revisions; deposit of certificates; judicial notice; reprints for distribution
<b>Section 12A</b>	Resubmission of charter which failed of approval
<b>Section 13</b>	Exercise of powers and functions by municipalities
<b>Section 14</b>	Enforcement of this chapter; declaratory relief; judicial review
<b>Section 15</b>	Petitions for adoption or revision of charter or suggestion of charter amendment; form
<b>Section 16</b>	Paper or document required to be filed or submitted; presumptions
<b>Section 17</b>	Election laws; applicable and conflicting provisions
<b>Section 18</b>	Method of electing officers
<b>Section 19</b>	Special laws enacted after Nov. 8, 1966
<b>Section 20</b>	Provisions of charter or amendment deemed consistent with certain other laws