

CHAPTER 54-40.4

COUNTY-CITY HOME RULE

54-40.4-01. County-city home rule - City participation. One or more counties and one or more cities within each county may frame and adopt a home rule charter to form a single unit of local government pursuant to this chapter. A county-city home rule charter may include a city that participates in proposing the charter if a majority of the qualified electors of the city voting on the question approve the proposed charter.

54-40.4-02. Method of proposing home rule charter. The process for drafting and submitting a county-city home rule charter may be initiated by:

1. Separate motions by one or more boards of county commissioners and one or more city governing bodies within each of those counties;
2. The execution of a joint powers agreement; or
3. A petition filed with the governing body of each county and city and signed by ten percent or more of the total number of qualified electors of each county and city voting for governor at the most recent gubernatorial election. The petition must be signed by at least ten percent of the electors residing within each participating city and ten percent of the electors residing in the remainder of the county.

54-40.4-03. Charter commission alternatives - Powers and limitations - Charter contents.

1. Within sixty days after proceedings are initiated for a county-city home rule charter, the governing bodies of the affected counties and cities shall enter into a joint powers agreement specifying the procedure for framing the charter, which may include the establishment of a single, cooperative charter commission with membership representing each county and city. As an alternative, the governing body of each county and city may establish a charter commission to frame the charter in cooperative study with the charter commissions of the other counties or cities. The governing bodies shall designate one of the members as chair of the charter commission.
2. Each governing body may, whether separate charter commissions are established or another procedural arrangement is established through execution of a joint powers agreement, set the compensation and expenses of charter commission members and, from its general funds, furnish the charter commission with office space, supplies, and legal, clerical, and other assistance.
3. A charter commission, during its deliberation, may hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion on the subject of the proposed county-city home rule charter, and may report periodically to the affected governing bodies on its progress. In preparing the charter, the charter commission may:
 - a. Include all, or any part, of the available powers enumerated by sections 11-09.1-05 and 40-05.1-06 for county and city home rule in the county-city charter, subject to the limitations of those provisions. A unified county-city government may not levy any tax that would not otherwise be authorized within the jurisdiction of a city or county pursuant to section 11-09.1-05 or 40-05.1-06, and city taxes may be levied only within areas of the unified government which are designated as participating cities;

- b. Provide for adjustment of existing bonded indebtedness and other obligations in a manner that will provide for a fair and equitable burden of taxation for debt service;
 - c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments unified under the charter;
 - d. Provide for the reorganization, abolition, or adjustment of boundaries of any existing boards, commissions, agencies, and special districts of the unified governments;
 - e. Include provisions for transition in implementing the charter, including elements that consider the reasonable expectations of current officeholders such as delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;
 - f. Include provisions for the limited application or temporary implementation of the charter, including provisions that permit implementation on a trial or experimental basis such as the expiration of the charter on a date certain in the future, required reapproval of the charter by the electors at a future date, or a phased-in implementation of various aspects of the charter; and
 - g. Include other provisions that the charter commission decides to include and which are consistent with state law.
- 4. A county-city home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term.
 - 5. A county-city home rule charter may not diminish the future term of office, or redesignate an elected office as appointed, with respect to any person who, on August 1, 1993, holds an elected county office and continues to hold that specific office for future terms on an uninterrupted basis. This subsection does not apply after January 1, 2002, or if the person holding the affected office consents in writing to the proposed charter and submits that written document prior to the scheduled implementation of the charter to a district judge serving the judicial district in which the county is located.
 - 6. The charter commission shall submit a single, joint report and proposed charter within one year after appointment, unless a later submission date is agreed to by the affected governing bodies. The proposed charter or accurate summary of the charter must be published in the official newspaper of each affected county and city, at the expense of each county and city, at least once during two different weeks within the thirty-day period immediately preceding the date of election. However, a city with a population of one thousand or less may, instead of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city.

54-40.4-04. Submission of charter to electors. At least sixty days, but not more than two years, after submission of the proposed charter to the affected governing bodies, the proposed charter must be submitted to a vote of the qualified electors of each affected county and city at a primary or general election held concurrently. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed charter. If the proposed charter has been submitted to a vote of the qualified electors of a county or city, the governing body may call a special election to resubmit the proposed charter to a vote of the qualified electors, and the special election must take place at least sixty days after the call for the special election.

54-40.4-05. Ratification by majority vote - Effect of unification - Former powers preserved - Supersession of existing charters and conflicting state laws - Filing of copies of new charter.

1. If a majority of the qualified electors of the county and a majority of the qualified electors of at least one city in the county voting on the question approves the charter, it is ratified and becomes the organic law of the area on the first day of January or July next following the election. However, the proposed charter may condition the approval of the charter on separate approval by any number of specified counties or cities participating in the charter process.
2. On the effective date, the separate corporate existence of the county and of each participating city are unified into one unit of local government. The unified government shall succeed to, possess, and own all of the assets and, except as otherwise provided in the charter, becomes responsible for all the obligations and liabilities of each affected county and city. Any provision of law authorizing contributions or aid of any kind from the state or federal government to an affected county and city remains in full force and effect with respect to the unified county-city government. All powers granted any county or city by general law are granted to a home rule county-city.
3. The county-city home rule charter and the ordinances made pursuant to the charter must be liberally construed to supersede, within the territorial limits and jurisdiction of the affected area, any conflicting state law. The charter may not authorize the enactment of ordinances to diminish the authority of boards of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. Any ordinance of a unified county-city government does not supersede any specific statutory limitation imposed on a home rule county or city.
4. One copy of the charter as ratified must be filed with the secretary of state, one with the recorder, unless the board of county commissioners designates a different official, for any affected county or city, and one with the officer of unified county-city government responsible for maintaining permanent records. Courts shall take judicial notice of the charter.

54-40.4-06. Amendment or repeal - Discontinuance of participation.

1. A county-city home rule charter may be amended or repealed by a proposal submitted by the governing body of the unified county-city government or by a petition filed with the governing body signed by ten percent or more of the total number of qualified electors within the jurisdiction of the county-city government who voted in the last preceding general election. The governing body may appoint a charter commission to draft amendments to the charter. The proposals must be submitted to a vote of the qualified electors of the unified county-city government at the next primary or general election. The voters may accept or reject any amendment or a repeal by a majority vote of the qualified electors of the unified government voting on the question at the election.
2. A participating county or city may discontinue its participation in the unified county-city government by filing with the governing body a petition proposing the action that is signed by ten percent or more of the total number of qualified electors within the county or city. The proposal must be submitted to a vote of the qualified electors at the next primary or general election. The voters may accept or reject the proposal by a majority vote of the qualified electors of the county or city voting on the question at the election.

54-40.4-07. Manner of calling and holding elections. The elections provided for in this chapter are subject to the laws applicable to other elections. All qualified electors of any affected

county and city are eligible to vote at the election. The charter commission, for proposals to adopt a home rule charter, or the governing body, for proposals to amend or repeal a home rule charter, shall prescribe the form of ballot so that the voter may signify whether the voter is for or against the proposed home rule charter or the amendment or repeal.

54-40.4-08. Vested property - Rights of action - Actions saved. The adoption of any charter or amendment does not destroy any property, action, right of action, claim, or demand of any nature vested in the county-city. All rights of action, claims, or demands are preserved to the county-city, and to any persons asserting any claims against the county-city as though the charter or amendment had not been adopted. The adoption of any charter or amendment affects neither the right of the county-city to collect special assessments previously levied under any law or charter for the purpose of public improvements, nor impairs the obligation of any existing contract to which the county-city is a party.

54-40.4-09. Effect of amendment or repeal on salary or term of office. On the first day of January following repeal of a county-city home rule charter any affected county and city reverts to the form of government in place immediately preceding adoption of the home rule charter. If positions to which officials were elected under the home rule charter are substantially the same as positions under the form of government to which the county and city revert upon repeal, the elected officials shall continue to exercise the authority of their positions for the salary prescribed by the home rule charter until expiration of their terms of office as prescribed by the home rule charter. An amendment of a home rule charter may not diminish the term for which any official was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term.