

# 2023 New Haven Charter Revision

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PRESENTATION TO THE NEW HAVEN CHARTER REVISION COMMISSION

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# “Home Rule”: A Misnomer?

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“Home Rule” is a term that seems self-evident on its face.

It frequently means different things to different people.

Some believe the words invoke a degree of “local authority,” “local control” or, even, sovereignty.

The words are not what they appear: a misnomer rife with ambiguity and misunderstanding.

# What is “Home Rule”?

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The Advisory Commission on Intergovernmental Relations (“ACIR”) undertook the drafting of a simple, direct, readable, and explicable definition of “home rule.”

Not an easy task; yet, if we want to build a foundation for thriving municipalities in the 21<sup>st</sup> century it makes great sense to understand how two simple words have been misconstrued.

# Dillon's Rule

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Connecticut's form of home rule traces its roots to several judicial decisions in the post-Civil War era that molded the controlling legal maxim known as "Dillon's Rule" [**Clinton v. Cedar Rapids & M.R.R. Co.**, 24 Iowa 455 (1868)].

The rule holds that a municipal corporation can exercise only the powers:

- Explicitly granted to them;
- Necessarily or fairly implied in or incident to the powers expressly granted; and,
- Essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.

# Local governments have no inherent legal or sovereign authority.

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Dillon's Rule was validated and nationalized by the U.S. Supreme Court in the first quarter of the 20<sup>th</sup> century.

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The Supreme Court embraced and codified the rule and settled the issue of local government legal authority by asserting that “all sovereign authority” in the United States resides with either the **federal or state governments**: “There exist within the broad domain of sovereignty but these two” [**Hunter v. Pittsburgh**, 207 U.S. 161 (1907)]

# Connecticut Constitution of 1818

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While the Constitution of 1818 was silent on “home rule” and there was barely any mention of local government in that document.

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The notion of limited municipal authority was repeatedly addressed by our courts in the 19th century.

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Up to and including 1957 the General Assembly made the rules for local governance by enacting Special Acts.

# The Home Rule Act of 1957

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After 1957, the General Assembly curtailed the Special Act regimen for local governance by adopting the Home Rule Act which allowed any municipality to write, adopt, and, as desired, amend, its own charter and to conduct municipal business **within the scope of powers granted by the legislature.**

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Municipal authority is primarily found in Title 7 of the General Statutes, although additional “explicit” or “express” grants of authority can be found throughout our codified state laws.

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Once again, this legislative framework confirmed the notion that municipalities are “creations of the state” or “creatures of the state” by affirming that **municipalities had no inherent power to modify legislative acts; or any “inherent legislative authority” whatsoever.**

# Purpose of the Home Rule Act

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To relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concern; and

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To enable a municipality to draft and adopt a home rule charter “which shall constitute the organic law of the city, superseding its existing charter and any inconsistent special acts.”



# Connecticut Constitution of 1965

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Our conception of “home rule” was fully constitutionalized in 1965 with the adoption of Article Tenth of the 1965 Constitution, entitled “Of Home Rule.”

The Constitution now permits the General Assembly “by general law” to delegate to municipalities “such legislative authority as from time to time it deems appropriate...relative to the powers, organization, and form of government of such political subdivisions.”

# However...

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Under Article Tenth, the legislature retained a more limited use of “special legislation” with respect to “...the powers, organization, terms of elective offices or form of government of any single” municipality as well as the ability of the General Assembly to address (a) borrowing power, (b) validating acts, and (c) formation, consolidation or dissolution of any town, city or borough.”

The 1965 Constitution also reserved the right of the General Assembly to adopt Special Acts if “in the delegation of legislative authority by general law the general assembly shall have failed to prescribe the powers necessary to effect the purpose of such special legislation.”

Thus, under the 1965 Constitution municipalities conduct their business **within a limited and circumscribed delegation of authority.**

# An Artifice or Construct

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Connecticut “home rule” is an artifice or construct for the orderly operation of local government under the superior constitutional and legislative authority of the state.

Connecticut local governments have no inherent authority for self-government because the capacity for governance is derived entirely from the authority of the state.

# Silence Is Not Authority

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In the last analysis the question for municipal decision-makers is **not whether there is “a statutory prohibition against (an) enactment)” but whether there is “statutory authority for the enactment”**.

In other words, when it comes to the governance of municipalities, **silence is not authority**.

# Creatures of the State

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This notion of the “creature of the state” or “creations of the state” is reinforced when you read the words of Iowa Supreme Judge John F. Dillon, when he opined, as if paraphrasing a 19<sup>th</sup> century gothic novel by his contemporary Mary Shelley, that state legislatures:

“...breathe into them (municipalities)  
the breath of life,  
without which they cannot exist.  
As it so creates, so it may destroy.”

That just about sums it up.

# Express Grants of Authority: Structure

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Connecticut municipal governments are authorized only to conduct their affairs when “expressly granted” the right to do so by the General Assembly.

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This covers the range of government activities starting with the ability to address the “structure” of government; that is, the power to choose the form of government, a municipal charter and to enact charter revisions.

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Paradoxically, this power is one most clearly conferred yet infrequently exercised.

# Express Grants of Authority: Functions

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The reach of Title 7 and other statutes also impacts the government and how local officials exercise the authority granted to them on the “functional” issues of management operations of government.

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Often there is an ambiguity as to whether a Mayor can act in a certain way.

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If the grant of authority is not directly on point, the question usually comes down to whether a local official or their legal advisor can construe a function or power **“necessarily or fairly implied in or incident to” the express grant of authority.**

# Express Grants of Authority: Fiscal

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The issue of constricted authority is also present on matters of “fiscal” authority; that is, the ability to set its budget and tax rates.

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Questions of municipal authority can arise with respect to compliance with laws that govern the borrowing of funds or state mandates (funded or unfunded).

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The simple fact that the state sets the rules on what can be taxed or collected is likewise a major factor.





# Express Grant of Authority: Personnel

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Issues of constricted authority involving “personnel” whose job is to administer the affairs of local government.

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Title 7 comes into play. The Municipal Employee Relations Act (“MERA”) occupies the field by narrowing the ability of municipalities to set employment rules, remuneration rates, employment conditions and collective bargaining.

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MERA also impacts on the processes of collective bargaining as well as the mediation and arbitration of disputes.

# Local Control and Authority: A Conundrum

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**It is evident that one can have local control with limited authority.**

- For example, a municipal police department is responsible for the prevention and suppression of crime; yet a municipality has no legal authority to control firearms within its geographic limits.

**Conversely, a municipality can have authority yet limited control.**

- A Mayor is legally authorized to represent the municipality and the legislative body is responsible for approving agreements in the collective bargaining process.
- Yet, if the agreement is not reached or there is a dispute about the interpretation of a provision, local control is ceded to an arbitration system that controls the final decisions on behalf of the parties involved with virtually no public input, involvement or control

# The Municipal Charter: A Blueprint for Governance

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Accountability for the chief executive officer, in the administration of City government.

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Oversight for the legislative body, in the adoption of ordinances, financing of the government and oversight of the administration.

# Charter Revision: Goals

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**Review your Charter with an eye on:**

**Clarity:**

The public and public officials should be able to understand and navigate the document.

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**Flexibility:**

The document should be written with broad proscriptions of a Constitution. Leave day-to-day governance to Ordinances and Budget.

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**Accountability:**

Roles should be clear so that the public can hold elected officials accountable.

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**Avoiding Culture of Disregard or Paralysis:** The provisions of a Charter should be unambiguous so that it is truly a governing document that is followed.

# Scope of the Enterprise

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Charter review is beneficial time-to-time to consider issues of magnitude and importance to the City with an eye on the effective representation of the community

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The Charter Revision Commission (“CRC”) will establish the scope and breadth

# Defining Scope: II

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Statutory Public Hearing

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Meetings with the Mayor, Board of Alders and other Local Officials

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Start Small: “Red-Line” Exercises with Corporation Counsel and CRC  
Counsel

# Defining Scope: III

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Understanding the Functions of Government

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Micromanagement or Constitution?

# A Governing Document I

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Tricky Assignment

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Municipalities Have No Inherent/Implied Powers

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State Constitution Article Tenth

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Title 7 of the Connecticut General Statutes





# A Governing Document II

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Impact of Collective Bargaining Agreements

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Charter versus Ordinances

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MERA



# The Agenda: Part I

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1. Making the Charter Gender Neutral throughout;
2. Correcting the language on the number and terms of the members of the Board of Education;
3. Updating Board of Alders compensation to \$5,000 for Alders and \$6,250 for President and including an increase tied to cost of living increases;
4. Four Year Terms for Mayor, City Town Clerk, Alders and Registrars;
5. Maintaining the same number of Alders on Board and Commissions when all Alders are of the same party;

# The Agenda: Part II

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6. Updating the Charter to include provisions requiring all Memorandum of Understanding to be approved by Alders;
7. Reviewing the Parks Commission lifetime memberships;
8. Removing provisions that have timed out from the previous charter including but not limited to those related to approving ordinances concerning purchasing and department heads qualifications;
9. Review extending the time period for the approval of nominees to Boards and Commissions from 60 days to 90 days.

# The Agenda: Part III

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10. Reviewing the Mayor's request concerning residency requirements only apply to those of his appointees approved by the Board of Alders (those are the Fire Chief, Police Chief, the four coordinators, Chief Administrative Office, Controller, Community Services Administrator, and Economic Development Administrator) and the others not approved by the Board of Alders no longer be required to be resident electors; and,
11. "...review of and report on the entire Charter."

# The 11<sup>th</sup> Charge...

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**Preamble**

**Article I: Construction, including definitions (Article I)**

**Article II: Incorporation and General Powers**

**Article III: The Mayor**

**Article IV: The Board of Alders**

**Article V: Other Elected Officials**

**Article VI: The City Government: Departments and Department Heads**

**Article VII: Appointive Boards and Commissions**

**Article VIII: Budgetary Procedures**

**Article IX: Improvement Bonds**

**Article X: Capital Projects Committee and Capital Budget**

**Article XI: Retirement and Pension Systems**

**Article XII: Certain Laws Included by Reference**

**Article XIII: Historical Special Act Provisions: Personnel/Civil Service, P+Z**

**Article XIV: Administrative Provisions**

**Article XV: Sunset Provisions**

# A Cautionary Note

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**THAT LAST CHARGE IS EXPANSIVE;  
HOWEVER, LIMITED BY TIME AND CIRCUMSTANCE**

**TWO MATTERS TO CONSIDER:**

**MAY 15, 2023**

**APPROVAL AUTHORITY OF THE BOARD OF ALDERS**

# The Process I

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- The Board of Alders creates and appoints a CRC by two resolutions required by statutes [C.G.S. §7-188(b) and 7-190(a)].
- Not envisioned as a partisan activity: not more than one-third of whom may hold any other public office in the municipality; and, not more than a bare majority of whom shall be members of any one political party.
- Two Required Public Hearings: At the outset and at the conclusion [C.G.S. §7-191(a)].
- Work plan formulated and executed at public meetings of CRC from January 2023 to May 2023.
- Submission to Board of Alders: Public Hearing, within forty-five (45) days of receipt of proposed CRC revision;

# The Process II

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- Action by Board of Alders within fifteen (15) days following hearing and [C.G.S. §7-191(b)].
- If no recommendations and CRC revisions are approved, the Report is final and CRC is finished.
- If there are recommendations, CRC confers with Board of Alders and has thirty (30) days to act [C.G.S. §7-191(c)].
- Final Action by Board of Alders within fifteen (15) days of receipt from CRC [C.G.S. §7-191(d)] and whether the referendum shall be proceed in November 2023 [C.G.S. §7-191(e)]



# The Process III

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## **One or several questions.**

The Board of Alders submits the proposed charter to the ballot in the form of one or several questions [C.G.S. §7-191(f)].

## **Submission of question to the Secretary of the State.**

The City to be mindful of the requirement to submit “questions” to the office of the Secretary of the State more than sixty (60) days prior to the election [C.G.S. §9-370].

## **Approval at referendum.**

If the proposed charter is approved by a majority of the electors who participated in the general election the charter would be effective thirty (30) days thereafter, unless an effective date is specified within the document [C.G.S. §7-191(f)].

# Work Plan: January 2023–May 2023

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CRC Organizational Session: 30 January 2023.

1<sup>st</sup> Statutory Public Hearing: \_\_ February 2023.

## Working Meetings of CRC.

- Board of Alders, Mayor other public officials, and citizens participate in early overview sessions.
- Commission members engage in review, analysis and “red-line” of charter provisions.
- Subsequent meetings would address substantial issues raised by the public and public officials and involve extensive dialogue and review based upon the specific needs of Fairfield and the experiences of other similarly situated municipalities.

# Work Plan: May – July 2023

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CRC prepares proposed revisions for 2<sup>nd</sup> Public Hearing prior to final review following hearing.

CRC submits proposed revisions to City Clerk.

Proposed revisions appear on Board of Alders Agenda.

Review by Board of Alders.

Public Hearing by Board of Alders (within 45 days of submission to City Clerk).

Board of Alders action on CRC proposed revisions (within fifteen (15) days of Public Hearing).

- If approved, this would constitute the final action of the Board of Alders with the exception of the approval of questions for the ballot.
- If not approved, CRC revisions with Board of Alders Recommendations are returned to CRC.

Board of Alders Recommendations returned to CRC.

CRC reviews the Board of Alders Recommendations and prepares a final report.

# Work Plan: July – November 2023

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**CRC Submits Final Report to Board of Alders (within thirty (30) days) following receipt of Board Recommendations).**

**Board of Alders Accepts or Rejects Final Report (within fifteen (15) days of receipt from the CRC).**

**Board of Alders approves question(s) for the ballot**

**Newspaper publication of proposed Charter within thirty (30) days following approval.**

**Submission of questions to the Office of the Secretary of the State more than sixty (60) days prior to election.**

**The Referendum (November 2023).**

# Role of the Counsel

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Legal Advice

Research and Preparation for Workshops

Facilitate Deliberations and Interactions

# Charter Revision Projects

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New Britain (3)

Hartford (4)

Waterbury (2)

Hamden (3)

New Haven (2)

Stamford

Norwalk

Bridgeport

Middletown

Fairfield

East Windsor

Portland (2)

Darien

# Other Major Municipal Projects

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State of Connecticut – Pandemic Executive Orders

Stamford – Structural Reform of Personnel

Waterbury – Procurement and Civil Service

Hartford – Procurement and Civil Service

Hartford – City Treasurer’s Bankruptcy Team

New Haven – CBA Restoration Negotiations

New Haven – Corporation Counsel and Alder (10 years – President Pro Tem and Chair of Finance Committee)

Middletown – Forensic Analysis of Transit District

State of Connecticut – Procurement Reform and State-wide Radio System

New Haven and Waterbury Boards of Education – School Construction

# More Municipal Projects

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CCM – Outside Counsel to Board of Directors

COGs – WestCT, CT River + Naugatuck Valley

Hamden – Forensic Analysis of HANH Wall

Hamden – Counsel to Legislative Council

E. Haven – Mediated Dispute (Mayor + Chief)

New Haven – Dispute (Mayor + Alders)



# The Commission

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Hon. Michael Smart  
Chair

Carol Coles  
Hon. Salvatore DeCola  
Hon. Richard Furlow  
John A. Keyes  
Patricia Melton  
Serena Neal-Sanjuro  
Anne Schwartz  
Sandra Trevino