

## **CHAPTER 11-09.1 HOME RULE COUNTIES**

### **11-09.1-01. Methods of proposing home rule charter.**

The board of county commissioners may on its own motion cause a home rule charter to be drafted and submitted for adoption to the electors of the county in the manner provided in this chapter. A home rule proposal may be initiated in a petition filed with the board of county commissioners and signed by qualified electors of the county not fewer in number than two percent of the population of the county.

### **11-09.1-02. Charter commission - Membership - Preparation and submission of charter - Compensation and expenses - Publication.**

Within sixty days after proceedings have been initiated for a home rule charter, the board of county commissioners shall appoint a charter commission, comprised of at least five members, to draft the charter, unless a petition proposing a charter pursuant to section 11-09.1-01 prescribes the composition of the commission or the manner by which the composition of the commission is to be determined. The board shall designate one of the charter commission members as chairman of the charter commission. The board shall set the compensation and expenses of charter commission members. Actual expenses incurred by charter commission members may be reimbursed at the official reimbursement rates of the appointing authority. The board, from its general funds, may furnish the charter commission with office space, clerical help, supplies, and legal and other assistance. The charter commission shall hold at least one public hearing on the proposed charter and may use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the proposed charter. The commission shall prepare and submit the charter to the board of county commissioners within one year after appointment, unless the board allows additional time for submission of the charter. The charter must contain a list of county offices to be elected and any elected offices that will be eliminated or combined if the charter is adopted. The board of county commissioners shall publish the proposed charter once in the official newspaper of the county.

### **11-09.1-03. Submission of charter to electors.**

At least sixty days, but no more than two years, after submission of the charter to the board of county commissioners, the proposed charter must be submitted to a vote of the qualified electors of the county at a primary or general election. If the proposed charter has been submitted to a vote of the qualified electors of the county, the board of county commissioners may call a special election to resubmit the proposed charter to a vote of the qualified electors of the county, and the special election must take place at least sixty days after the call for the special election. The board may amend the proposed charter prior to its resubmission to the electors.

### **11-09.1-04. Ratification by majority vote - Supersession of existing charter and conflicting state laws - Exception - Filing of copies of new charter.**

If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election, and extends to all its county matters, unless limited by law. The charter and the ordinances made pursuant to the charter in county matters, except for matters pertaining to county elections, must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. Any ordinance enacted or adopted by a county pertaining to county elections under a home rule charter in conflict with state law is void. The charter may not authorize the enactment of ordinances to diminish the authority of a board 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. An ordinance of a home rule county may not supersede sections 49-22-16 and 49-22.1-13. One copy of the charter as

ratified and approved must be filed with the secretary of state; one with the recorder for the county, unless the board of county commissioners designates a different official; and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

**11-09.1-04.1. Multicounty home rule.**

1. Two or more counties may draft and submit for adoption a multicounty home rule charter to the electors of each county pursuant to this section. The other provisions of this chapter apply to a multicounty home rule charter, except as otherwise provided by this section.
2. The process for drafting and submitting a multicounty home rule charter may be initiated by:
  - a. Separate motions by the boards of county commissioners of the participating counties;
  - b. The execution of a joint powers agreement between participating counties; or
  - c. A petition filed with each board of county commissioners of two or more counties and signed by ten percent or more of the total number of qualified electors of each county voting for governor at the most recent gubernatorial election.
3. Within sixty days after proceedings are initiated for a multicounty home rule charter, the boards of county commissioners 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. As an alternative, the boards of county commissioners in each affected county may establish a separate charter commission pursuant to section 11-09.1-02 to frame the charter in cooperative study with the charter commission of any other affected county. The charter commissions must submit a single joint report and proposed charter.
4. 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 multicounty home rule charter, and may report periodically to the affected governing bodies on their progress. In preparing the charter, the charter commission may:
  - a. Include any, or all, of the available powers enumerated in section 11-09.1-05, subject to the limitations of that section;
  - 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 the counties;
  - d. Provide for the reorganization, abolition, or adjustment of boundaries of any existing boards, commissions, agencies, and special districts of the county government;
  - 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 provision for the limited application or temporary implementation of the charter, including provisions that permit implementation on an experimental or pilot 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 components of the charter; and
  - g. Include other provisions that the charter commission elects to include and which are consistent with state law.
5. The proposed charter or accurate summary of the charter must be published in the official newspaper of each affected county, at least once during two different weeks within the thirty-day period immediately preceding the date of election.

6. If a majority of the qualified electors voting in each county on the charter votes in favor of the multicounty home rule charter, it is ratified and becomes the organic law of the multicounty area on the first day of January following the election or other effective date specified in the charter.
7. The amendment or repeal of a multicounty home rule charter may proceed pursuant to the amendment and repeal provisions of section 11-09.1-06 on a multicounty basis. A majority vote of the qualified electors voting in each county in the election is required to adopt any amendment of a multicounty charter. A majority vote of the qualified electors of only one or more participating counties is required to repeal a multicounty charter.

#### **11-09.1-05. Powers.**

After the filing with the secretary of state of a charter approved in reasonable conformity with this chapter, the county and its citizens may, if included in the charter and implemented through ordinances:

1. Acquire, hold, operate, and dispose of property within or without the county limits, and, subject to chapter 32-15, exercise the right of eminent domain for those purposes.
2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law; and establish debt limitations.
3. Levy and collect property taxes and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements, and establish mill levy limitations. Notwithstanding any authority granted under this chapter, all property must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments and all taxable property must be taxed by the county at the same rate unless otherwise provided by law. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law that determines what property or acts are subject to, or exempt from, ad valorem taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects.
4. Levy and collect an infrastructure fee. The fee must replace a general special assessment on all property for payment of infrastructure maintenance costs through a utility bill issued by the county. The money collected under this subsection may not be used for any purpose other than infrastructure maintenance costs. If a home rule county levies an infrastructure fee, the home rule county also may levy and collect green field special assessments. As used in this subsection:
  - a. "General special assessments" means special assessments levied for the purpose of maintaining existing roads and infrastructure and special assessments levied for the construction or repair of arterial roads and infrastructure that provide a benefit to the entire community.
  - b. "Green field special assessments" means special assessments levied for infrastructure costs associated with the development of agricultural or undeveloped property.
5. Levy and collect sales and use taxes, farm machinery gross receipts taxes, alcoholic beverage gross receipts taxes, a county lodging tax, and a county restaurant tax. Sales and use taxes and gross receipts taxes levied under this chapter:
  - a. Must conform in all respects with regard to the taxable or exempt status of items under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 and may not be imposed at multiple rates with the exception of sales of manufactured homes or mobile homes.
  - b. May not be newly imposed or changed except to be effective on the first day of a calendar quarterly period after a minimum of ninety days' notice to the tax

- commissioner or, for purchases from printed catalogs, on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the seller.
- c. May not be limited to apply to less than the full value of the transaction or item as determined for state sales and use tax, except for farm machinery gross receipts tax purposes.
  - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1, with the exception of a county lodging or county restaurant tax, and must be administered by the tax commissioner in accordance with the relevant provisions of chapter 57-39.2, including reporting and paying requirements, correction of errors, payment of refunds, and application of penalty and interest.

After December 31, 2005, any portion of a charter or any portion of an ordinance or act of a governing body of a home rule county passed pursuant to a charter which does not conform to the requirements of this subsection is invalid to the extent that it does not conform. The invalidity of a portion of a charter or ordinance or act of a governing body of a home rule county because it does not conform to this subsection does not affect the validity of any other portion of the charter or ordinance or act of a governing body of a home rule county or the eligibility for a refund under section 57-01-02.1. Any taxes imposed under this chapter on farm machinery, farm irrigation equipment, and farm machinery repair parts used exclusively for agricultural purposes, or on alcoholic beverages, which were in effect on December 31, 2005, become gross receipts taxes after December 31, 2005. Ordinances enacted after August 1, 2017, may not allow for the collection and levy of any tax not otherwise specified under this section.

6. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter, a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election or pursuant to the county officer combination, separation, or redesignation procedures of chapter 11-10.2. A 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. This subsection does not authorize a county to redesignate the elected offices of sheriff and state's attorney as appointed, except as provided in section 11-10-02.3.
7. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil and criminal penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. This subsection does not confer any authority to regulate any industry or activity regulated by state law or by rules adopted by a state agency. This subsection is subject to the provisions of section 62.1-01-03.
8. Lay out or vacate public grounds, and provide through its governing body for the construction, use, operation, designation, and regulation of a county road system.
9. Provide for zoning, planning, and subdivision of public or private property within the county limits but outside the zoning authority of any city or organized township. This subsection is subject to the provisions of section 62.1-01-03.
10. Exercise in the conduct of its affairs all powers usually exercised by a corporation.
11. Contract with and receive grants from any other governmental entity or agency, with respect to any local, state, or federal program, project, or works.

The people of all counties coming within this chapter have the full right of self-government in all matters within the powers enumerated in this chapter. The statutes of this state, so far as applicable, continue to apply to counties, except as superseded by the charters of the counties or by ordinances passed pursuant to the charters.

**11-09.1-05.1. Sales tax revenue transfer to school districts prohibited.**

Notwithstanding the provisions of chapters 54-40 and 54-40.3 or any other provision of law, revenue from sales, use, or other excise taxes levied under this chapter may not be transferred

to or for the primary benefit of a school district except for payment of bonded indebtedness incurred before April 19, 2007, or for capital construction and associated costs approved by the electors of the county before April 19, 2007.

**11-09.1-06. Amendment or repeal.**

Except as provided in section 11-09.1-06.1, the home rule charter adopted by a county may be amended or repealed by a proposal by the governing body of the county or by petition of the number of electors provided in section 11-09.1-01, submitted to and ratified by the qualified electors of the county. A petition to amend or repeal a home rule charter must be submitted to the governing body of the county. Within thirty days of receipt of a valid petition or approval of a proposal to amend or repeal a home rule charter, the governing body of the county shall publish any proposed amendment or repeal of a home rule charter once in the official newspaper of the county. At least sixty days after publication, the proposed amendment or repeal must be submitted to a vote of the qualified electors of the county at the next primary or general election. The electors may accept or reject any amendment or a repeal by a majority vote of qualified electors voting on the question at the election.

**11-09.1-06.1. Conformance with statute or court order - Amendment.**

1. When a portion of a home rule charter is preempted, superseded, or invalidated by a legislative act or a court order, the county may amend portions of the home rule charter by a resolution adopted by the governing body of the county. The resolution must reference the authority supporting the amendment.
2. A resolution passed under subsection 1 is effective after adoption by the governing body of the county. A petition, approval, or vote by the electors of the county is not required to amend a county's home rule charter under this section. Within thirty days after adoption of the resolution, the county shall publish the resolution once in the official newspaper of the county or on the official county website.
3. An amendment to a charter of a home rule county intended to add any power enumerated in section 11-09.1-05, which was not included in the county's original home rule charter, may not be amended under this section and must be amended under section 11-09.1-06. The county auditor shall file a copy of an amendment to a charter of a home rule county with the secretary of state.

**11-09.1-07. Commission - Terms of office - Vacancies.**

The board of county commissioners shall determine the term of office of the members of the charter commission at the time the members are appointed. The board of county commissioners shall fill any vacancy on the charter commission.

**11-09.1-08. Restriction on proposals to amend or repeal.**

Repealed by S.L. 1993, ch. 401, § 53.

**11-09.1-09. Manner of calling and holding elections.**

The elections provided for in this chapter are subject to the laws applicable to other elections of the county. All qualified electors of the county are eligible to vote at the election. The charter commission, for proposals to adopt a home rule charter, or the governing body of the county, 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.

**11-09.1-10. Effect of amendment or repeal on salary or term of office.**

On the first day of January following repeal of a home rule charter, the county reverts to the form of government of the county 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 reverts 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. No amendment of a home rule charter may shorten the term for which any official was elected or reduce the salary of the official's office for that term.

**11-09.1-11. General powers preserved.**

All powers granted counties by general law are powers of home rule counties.

**11-09.1-12. 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. All rights of action, claims, or demands are preserved to the county and to any persons asserting any claims against the county as completely as though the charter or amendment had not been adopted. The adoption of any charter or amendment affects neither the right of the county 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 is a party.

**11-09.1-13. Enforcement of criminal penalties.**

A county that has adopted a home rule charter may impose a penalty for a violation of an ordinance through a citation, a criminal complaint, or an information through the district court in the county where the offense occurred. The penalty for a violation of an ordinance may be an infraction or a class B misdemeanor.

**11-09.1-14. Payment of expenses for indigent defense services.**

The home rule county must pay for an attorney and those expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county ordinance.