



MEMORANDUM

FROM: BOROUGH ATTORNEY GREGORY J. CANNON

TO: BOROUGH OF RED BANK MAYOR & COUNCIL

CC: BOROUGH ADMINISTRATOR ZIAD SHEHADY
BOROUGH CLERK PAMELA BORGHI, RMC

DATE: MAY 3, 2021

RE: EXPLANATION OF THE NEW JERSEY STATUTORY METHODS OF
CHANGING THE FORM OF A MUNICIPAL GOVERNMENT

Methods of Changing the Form of Government

The laws of New Jersey permit two basic statutory methods for initiating a change in the form of a municipal government. First, there is the direct petition method. Second, there is the election of a charter study commission.

The “direct petition method” is the oldest, having precedents back into the 19th century. In New Jersey, the laws for each optional form of government establish the number of signatures that must be gathered on a petition in order to place on the ballot a question as to whether the existing form of government should be abandoned and replaced with a specified new form. A referendum is held according to a schedule contained in the law, and the decision of the voters prevails. Insofar as the direct petition method is not within the purview of any action(s) by the governing body, the “direct petition method” is not further explained in this memorandum.

The second method of change is within the purview of governing body action through the election of a “charter study commission” – as referenced in the Borough’s 2018 Management Enhancement Report.

Specifically, N.J.S.A. 40:69A-1 states:

Whenever authorized by ordinance of the governing body or upon petition of the registered voters of any municipality, an election shall be held in the municipality upon the question: “Shall a charter commission be elected to study the charter of and to consider a new charter or improvements in the present charter and to make recommendations thereon?”

The “charter study commission” approach is authorized by the Optional Municipal Charter Law of 1950, also known as the Faulkner Act, N.J.S.A. 40:69A-1 *et seq.* (the “OMCL”). The question of whether there shall be a charter study commission can be placed on the ballot either through a petition or through the enactment of an ordinance by the existing municipal governing body. At the next municipal election, and at same time that the voters decide whether there will be such a commission, they also vote for the members, with the five persons receiving the highest votes becoming the members if the commission is authorized.

The Work of a Charter Study Commission

A. Establishing the Charter Study Commission.

An election for a charter commission may be authorized by local ordinance adopted by the governing body, to be held at the next municipal election not less than seventy-five (75) days after adoption of the ordinance.

In the Borough, the question to be submitted to the voters, pursuant to the OMCL, would be as follows:

Shall a charter commission be elected to study the charter of the Borough of Red Bank and to consider a new charter or improvements in the present charter and to make recommendations thereon?

Further, the voters must actually take two actions, one to approve or disapprove this question and the second to elect five charter commissioners.

Persons who wish to be candidates for the charter commission must be registered voters of the Borough. They may be nominated by petition of at least three-percent (3%) or one-hundred (100) of the registered voters, whichever is less, but the number cannot be less than ten.

Candidates run on a nonpartisan basis; that is without political party designation or slogan; bracketing of a group of candidates on the ballot is not permitted. Petitions must be filed at least sixty (60) days before the election. The five candidates who receive the highest number of votes constitute the charter commission; if the question for a charter study commission fails, then no candidates are elected.

B. Organization of the Charter Study Commission.

If approved by the voters, the five (5) charter commissioners must organize and hold their first meeting within fifteen (15) days after the election. Essential tasks include the election of a chairperson, the establishment of meeting times and places, and the adoption of rules for the conduct of charter commission business. Most charter commissions also elect a vice-chairperson, a secretary, and a treasurer. The charter study commission must abide by the Open Public Meetings Act. Charter commission business must be conducted by a quorum, which is a majority of the members. If a vacancy occurs, the remaining members may appoint any qualified citizen.

Under N.J.S.A. 10:4-6 *et seq.*, the function and duty of the commission is: “to study the form of government of the municipality, to compare it with other available forms under the laws of this State, to determine whether or not in its judgment the government of the municipality could be strengthened, made more clearly responsive or accountable to the people or whether its operation could be more economical or efficient under a changed form of government.”

The charter study commission is given a period of nine (9) months from the date of its election to complete its study and file a written report with the Borough Clerk. The commission may report earlier than that time if its work is completed. When the commission has completed its organization, it must then plan its work and prepare a budget.

C. *Charter Study Commission Budget.*

The charter study commission must prepare a budget for submission to the municipal governing body as soon as practicable. The commission must comply with the standard budget timetable in use in the municipality, making sure that its request is submitted in time to be included in the municipal budget.

Several major categories must be considered in preparing the budget: consultant fees, secretarial services, legal fees, printing, postage, travel, office supplies, advertising, tape recording, rental of meeting space, and other incidental expenses.

D. *Phases of the Charter Study Commission’s Work.*

Following the planning period, usually about three weeks to a month after election, there generally are three phases to a charter study commission’s work: (1) a study of the present form of government, (2) an examination of alternatives, and (3) the development of conclusions and recommendations.

If the commission has been elected at the November general election, the first phase, a review of the existing government, often runs from about December 15 to March 1.

The second phase, study of alternatives, may extend from March 1 to May 1.

The third phase, decision making and report writing, from about May 1 until the report is filed no later than nine (9) months following the election.

1. *The First Study Phase—The Present Form of Government.*

As the initial study phase begins, a dual process usually takes place. Charter commissioners will schedule interviews with present and past elected officials, community leaders, and Borough employees. At the same time, commissioners will read pertinent studies and documents about the present form of government. In essence, in the study phase, the commission seeks to answer:

- Are the day-to-day operations of our government handled effectively?
- Does the present form of government provide adequate representation for all citizens?
- What are the major strengths and weaknesses of the present form of government?

After a public hearing or series of public hearings, the commission would close its first phase of the study. Commissioners would review what has been done and weigh the strengths and weaknesses of the present form of government.

2. *The Second Study Phase—Alternative Forms of Government.*

In this phase, the charter commission investigates alternative forms of local government by reading the statutory provisions for the other forms of government and, if possible, any literature that describes the philosophies and concepts of each form. Secondly, the commission probably will wish to schedule a series of interviews and meetings with persons from other municipalities that have changed their form of government.

Public hearings would be held to educate the public on the optional forms of government and how their adoption would affect the operation of the Borough, as well as potentially its election cycle and reorganization schedule.

3. *The Third Study Phase—Decision.*

The recommendations of the charter study commission may take one of three directions:

- a. The commission may determine that the existing form of government is adequate and, therefore, recommend no change. If this conclusion is reached, the commission is discharged upon filing its report and the process is completed.
- b. The commission may decide that one of the optional forms of government under the OMCL is preferable to the existing form of government. If this is its recommendation, the Borough Clerk must place the question of adopting that form on the ballot for a final decision by the voters within 60 to 120 days after the commission report is filed. The charter commission may specify whether this vote takes place at a regular election or at a special election within that period. The incumbent municipal governing body has no authority regarding this election. The charter study commission remains in office until that vote is taken.
- c. Finally, the commission may conclude that a change in form of government is desirable, but none of the forms available is adequate. The commission then would draft a special charter for the community and include it in the commission report. In this case the municipal governing body would be required to ask the state legislature to enact the charter as a special law, and the charter commission would remain in office until this process is concluded.

The charter study commission must make a recommendation nine (9) calendar months from the election, or about the first week of August. Regardless of the conclusion reached, the commission must file an original report with the Borough Clerk, and sufficient copies for any interested citizens, and to distribute a copy to each member of the governing body.