

Municipal Charters: A comparative analysis of 75 Maine charters

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The significance of a municipal charter, at least for the 75 towns and cities in Maine that have adopted one, can hardly be exaggerated. A charter is the municipal equivalent of a state or federal constitution, and it is within the municipal charter where such essential questions as the structure of government, the distribution of powers within the government, and a citizen's access to government are more or less completely answered. A municipal charter is a primary document; a taproot expression of local control: Home Rule authority congealed.

On the one hand, there is the observation that a charter can give powerful definition to a municipal government. On the other hand, the authority given to Maine towns and cities by statute to adopt internally regulating codes by ordinance make the questions "why have a charter?" or "why have more in your charter than absolutely necessary?" not entirely absurd.

By way of background, the municipal authority to enact a charter flows from the Maine Constitution, which at Article VIII Part Second, Section 1 reads:

"The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality shall so act."

The Home Rule implementation language regarding charters is found at 30-A MRSA §§ 2101-2109. These nine sections of law establish the statutory charter adoption, revision and amendment procedures. It was the enactment of this legislation, effective in 1970, that allowed municipalities to create, amend and revise their charters without first going to the Legislature for approval by means of a Private and Special Act. Despite the fact that municipalities can now create, amend and revise their charters on their own, charter maintenance is by no means a simple process. Charters can only be created or changed by secret ballot election, and charter adoption or revision is accomplished under the statutory process only by means of a specially created charter commission. Where ordinances are merely written on paper, charter provisions are etched in stone.

A related statutory home rule authority is established at 30-A MRSA § 3001. This statute authorizes municipalities to enact ordinances or bylaws governing any municipal activity to the extent such municipal authority is not expressly preempted by state or federal law or regulation. Because town meeting municipalities are able to accomplish so much in the way of describing and designating powers, duties and procedures by means of municipal ordinance, it is not automatically clear what advantages exist or are perceived to exist in going the charter route.

There are, to be sure, some compelling legal reasons to have a charter. One such reason is found at 30-A MRSA § 3007(1), which reads:

"No change in the composition, mode of election or terms of office of the municipal legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance."

And indeed, the primary reason to create a charter is to accomplish what is denied to ordinance authority - the vesting of legislative authority, in whole or in part, to some body other than the open town meeting. There must be more to charters than simply this accomplishment, however, because of the 75 municipal charters in effect in Maine, only 57 create some form of representative government.

Another statutory provision, 30-A MRSA § 2602, yields another technical answer to the question "why have a charter?". This section of law deals with the way that vacancies in a municipal office are created and filled. Vacancies under this section of law are defined as non-acceptance, resignation, death, removal from the municipality, permanent disability or incompetency, failure to qualify within 10 days of written notice to do so, or failure to be elected. The law further states that:

Under its home rule authority, a municipality may apply different provisions governing the existence of vacancies in municipal office and the method of filling those vacancies as follows:

- A. Any change in the provision of this section relating to municipal officers or a school committee must be accomplished by charter; and
- B. Any change in the provisions of this section relating to any other municipal office may be accomplished by charter or ordinance.

There is therefore a technical reason to establish a charter if the municipality wishes to adopt a procedure by which municipal officers (i.e., selectmen, councilors) and/or school committee members may be recalled from office by the electorate or may otherwise forfeit their elected position for reasons beyond the statutory vacancies. In fact, just less than half of the existing municipal charters in Maine have recall provisions, and a similar percentage of existing charters create a vacancy in office when an elected official is convicted of a crime or repeatedly fails to attend regularly scheduled meetings.

And there is yet a third legal reason to adopt a charter. 30-A MRSA § 2501, a section of law that sets forth the basic interrelationship among Title 30-A election laws, municipal charters, and the state election laws in Title 21-A, opens with the following clarification:

Except as otherwise provided by this Title (30-A) or by charter, the method of voting and the conduct of a municipal election are governed by Title 21-A.

In other words, the Maine Legislature has specifically recognized that municipalities may exercise their constitutional home rule powers to adopt a charter that contains provisions for municipal elections which differ from those set forth in Maine law.

But even taken together, these technical reasons to adopt a charter--to create a representative form of government and/or modify the statutory election and de-election processes--do not fully address the question of "why create a charter?" In the last 22 years since municipalities were able to write and adopt charters on their own, at least 16 municipal charters have been created where they did not before exist, some of them for none of the technical reasons just cited. Charter maintenance work has been even more active. Half of all municipal charters have been significantly amended or revised in the last three years alone. On a weekly basis, news reports of charter problems or charter efforts bubble to the surface of local press accounts across the state as local governments and the citizens they serve strive to work and rework their charters to better suit their needs.

There must be more to the municipal charter than meets the eye.

The purpose of this article is to provide an overview of the 75 municipal charters in Maine; review both quantitatively and substantively those charter provisions that create municipal authorities not otherwise

available under general municipal statutes; review those charter provisions that stand out as being unique methods of dealing with common municipal problems; and generally take a snapshot of the direction in which municipal charters are going.

Structure of Local Government

One way to categorize municipal charters is with regard to the structure of local government the charter creates. There are roughly four such categories:

Pure Town Meeting Charters: As mentioned above, some municipalities in Maine have adopted charters even though the charter vests no legislative authority with the board of selectmen or town council. One fourth of the charters in Maine are of this "pure town meeting" type. The range of population in the municipalities governed by this type of charter runs from about 1,000-8,000 inhabitants. Only one of these pure town meeting charters (Wales) describes the structure of a selectmen/town meeting government with no designated municipal manager or administrator. The remaining 17 pure town meeting charters describe a selectmen (or council)/town meeting/manager form of government. Less than one third of the existing charters in this category represent remnants of council/manager charters created by Private and Special Acts of the Legislature prior to the enactment of the Town Manager Plan, now found at 30-A MRSA § § 2631 et seq. The majority of charters in this category were first adopted after the inception of the Town Manager Plan, leaving alive the question of why these municipalities created a charter.

A most unique charter with regard to the structure of government is Sanford's approach, a Private and Special Act charter that establishes a representative town meeting form of government. The Sanford system was designed in 1935 to retain as much of a direct form of government as possible in the face of a growing population.

Revised in 1980, the Sanford charter retained its representative town meeting form of government while adding a town administrator position to its governmental structure. The Sanford system is no different than a pure town meeting form of government, except only elected representatives are allowed to participate at the town meeting. The current number of elected representatives to the Sanford town meeting is 147.

Limited Town Meeting Charters: Aside from the Sanford charter, the first type of charter creating a representative form of municipal government is a council/manager/town meeting charter where the council possesses some but not all of the legislative authority in the town. Generally, the council is authorized under these charters to make any municipal decision and take any municipal action by order, resolve or ordinance except that the town meeting retains full authority to raise through taxation or borrowing all funds necessary to run the government. There are 13 charters (17%) in Maine of this type, covering towns with populations from 1,000-13,000 inhabitants. Over half of these limited town meeting charters take on a decidedly transitional characteristic where they contain within them an express and typically simple petition procedure to abolish the town meeting altogether; an action that automatically shifts the town meeting's budget enactment authority to the council with little or nothing in the way of further charter amendment.

Council/Manager Charters: The essential characteristic of the third type of charter is that all legislative authority is vested in the town or city council. 33 (44%) of the 75 municipal charters in Maine are of this type, governing municipalities with a population range from 1,700-65,000 inhabitants. A few charters of this type create the office of mayor, but the mayor under this structure is chosen by the council rather than elected by the voters at large, and such mayors possess few powers or responsibilities not routinely given to council chairs. It is typical for charters of this kind to include relatively detailed provisions

describing the town or city manager's responsibilities, express separation of powers language sharply limiting the council's authority to interfere in the day-to-day administrative responsibilities of the city manager as well as the budget adoption and bonding approval processes to which the council must adhere.

Council/Mayor Charters: The final charter type with regard to the overall structure of municipal government is the council/mayor or "strong mayor" charter. Some characteristics of a strong mayor system are:

1. the mayor is elected by the full electorate rather than simply chosen by the council;
2. the mayor is given the power of veto and, in some cases, budget line-item veto; and
3. the mayor is given considerable appointive powers.

Strong mayors are vested with some executive and administrative responsibilities typically given to city managers under council/manager charters, and to underscore the mayor's special role, the purely management figure under a strong mayor charter is commonly described as an administrator rather than a manager, or even "assistant to the mayor". The powers of appointment, veto and budget creation given to the elected mayor under a strong mayor charter closely resemble the authorities vested in the governor on the state level. There are 11 municipal charters in Maine that create the position of elected mayor. While most of the 11 elected mayor charters give some special authority to the office of mayor, some mayor charters are "stronger" than others. The strongest mayor charters have been adopted by cities with populations from 15,000-40,000 (Waterville, Saco, Biddeford, and Westbrook).

In 1978, the TOWNSMAN published a profile of municipal charters in Maine that was prepared by the Bureau of Public Administration at Orono. A comparison of the data in that report with current data shows a larger proportion today of pure town meeting charters and mayor/council charters than was the case 15 years ago.

Any charter, regardless of the particular structure of local government it sets out to describe, can be reviewed with regard to the manner it accomplishes three primary goals: a description of the qualifications and duties of the municipal officials, primarily the municipal officers, a description of the municipal budgeting and borrowing procedures; and an articulation of the policies and procedures governing citizen access to municipal government.

Qualifications and Duties of Municipal Officials

Council size/term length: As has been noted, any change in composition, mode of election or term of office of the municipal legislative body can only be accomplished by charter (30-A MRSA § 3007(1)). This should not be confused with the size or term length for boards of selectmen possessing no legislative authority, which can be adjusted by town meeting vote (30-A MRSA §2526(4)).

The size of the boards of municipal officers described or created by charter provisions in Maine run from one three-member board of selectmen in a pure town meeting charter (Wales) to an eleven-member council with an additional elected mayor (Biddeford). With only a few exceptions, the municipal charters evenly split between creating five-member councils and seven member councils. It is most typically the 7-member council that has an elected mayor in addition to the council. Only four municipalities have nine-member councils (Bath, Brunswick, Bangor and Portland).

By far, the favored term length designated by charter is 3 years. 80% of all charters create a three-year term for a municipal officer; the remainder designate a 2-year term length.

Term limits: As the debate continues on the state and federal level as to whether constitutional

amendments should be considered establishing term limits for elected representatives, eight municipal charters in Maine have already created council term limits. Three charters impose term limits on the office of school board member and/or positions on appointed boards. One charter places a term limit on the office of mayor. The favorite term limit for a council seat is two consecutive terms, although three-term and four-term limits are also designated.

Vacancies - attendance and forfeiture of office: Nearly every charter contains some express language describing how a municipal officer's position shall become vacant. As discussed above, municipalities can by ordinance expand on the statutory vacancy standards for municipal officials, other than municipal officers, but the creation of special vacancy provisions for the municipal officers must be accomplished by charter (30-A MRSA § 2602). Typically, a charter will list the standard, statutory causes of vacancy (death, resignation, failure to qualify, failure to be elected, removal from the municipality, removal from the election district, etc.), but 80% of existing charters go on from there to add special forfeiture of office provisions.

Beyond the normal definitions of vacancy, the forfeiture standards are typically three: violation of an express charter prohibition, conviction of a felony or "misdemeanor involving moral turpitude", and unexcused failures to attend council meetings. Over half the charters in Maine consider poor attendance, as defined in the charter, as cause for forfeiture. The most often-used attendance standard is failure to attend three consecutive council meetings. Less commonly employed charter provisions require the annual municipal report to include all council members' attendance records. A few charters automatically forfeit a councilor's quarterly pay if attendance levels fall below 50%-or some other percentage-of-scheduled meetings for the quarter. At least five charters in Maine create the same attendance standards for other municipal boards, such as the school committee.

Several charters establish a qualifying age of 21 for any elected official. In the absence of express charter language, the age of majority, 18 years, would apply as the qualifying age.

Prohibited acts: Nearly every municipal charter has a list of four or five express prohibitions that apply to all municipal officers, officials and employees. The standard list prohibits: discriminatory appointment or removal on the basis of race, gender, ethnicity, religion, or age; the making of false statements or perpetration of fraud; the acceptance of bribes; the solicitation of favors or special privileges; and interference in any person's rights to political activity and expression.

In addition to merely prohibiting such activity, and in addition to making such activity the grounds for forfeiture of elected office, 16 charters include language that disqualifies from office for a number of years an elected official who performs a prohibited act. The disqualification period is typically five years.

Judge of qualifications/subpoena powers: Nearly every town or city council, by charter, is granted the express authority to judge the qualifications of its members. Very few charters go into any detail beyond the boilerplate language to describe any disqualification procedures, such as a councilperson's right to hearing, counsel, cross examination of witnesses, or any other form of due process. Even without process language, however, the authorization of council to judge its members' qualifications would appear to be an important charter provision, particularly when special forfeiture or vacancy standards have been established in the charter. Without the council having an express first determination of a member's qualifications pursuant to a special charter qualification standard, a qualification dispute would likely have to begin-rather than merely end-in the courts.

It is also the case that nearly every town and city charter grants the council a power of subpoena. This authority of the council to compel attendance comes in two forms. Under older Private and Special Act language, several municipalities can secure the issuance of a subpoena from a Superior or the Supreme

Judicial Courts. Apparently this type of authority was typically granted by the Legislature under the pre-1970 charter creation process, and unless expressly repealed in the course of a subsequent charter revision, the council's authority to have a subpoena issued by the courts, even in the absence of any related litigation, would appear to still exist.

The less-archaic subpoena or compulsory attendance language does not reference the courts, and the subpoena would apparently be issued by the council itself, served at the direction of the council, and if unsuccessful in achieving attendance from the desired party, the basis of an action enforcement of the charter's subpoena provision.

Filling vacancies: Unless designated by charter, state law does not allow a council to fill a vacancy on the council by appointment. A special election must be called. Approximately a third of the existing charters take advantage of their charter authority by allowing the council to appoint a person to fill a vacancy created on the council until the next election. Half of those charter-created authorities, however, are limited to the filling of short-term vacancies only. Only 18 councils in Maine are given the right to fill council vacancies by appointment for a period of more than six months. Unless otherwise amended by charter, school committees are authorized by statute to fill vacancies by appointment (20-A MRSA § 2305(4)). At least eight municipal charters shift that appointment authority to the council.

Required meeting minutes/ agenda: With almost no exception, every charter requires the board of selectmen or council to keep a record of all business conducted; that is, minutes of their meetings. One charter requires all meetings of the municipal officers to be electronically recorded and transcribed. Several charters require the board or council minutes to be posted at the town office or the locations where municipal warrants are generally posted. Orrington's charter, which describes a limited town meeting structure of government, requires that minutes be kept of the town meeting as well as the meetings of the selectmen.

Five charters expressly require the municipal officers to develop a written agenda for every regularly scheduled meeting and either post that agenda for a prescribed period of time before the meeting, or publish the agenda in a timely manner in the local newspaper.

Unless imposed by charter, there is no legal requirement to keep full minutes of meetings of the selectmen or council, nor does state law require the use of agendas.

Quorum: There are two issues surrounding the question of quorum. The first issue to resolve is the number of councilors or selectmen that must be in attendance at any meeting so that the council can potentially take action. All charters but one employ a simple quorum requirement of a majority of the council or board. One charter requires a majority-plus-one to do business.

The second quorum issue that comes up from time to time concerns the number of affirmative or negative votes necessary to take action; is it a majority (or super majority) of the full council, or merely a majority of the councilors present as long as a quorum has been achieved? About a third of the existing charters are silent on this point. Of the 50 charters that address the issue squarely, only five allow the majority of the quorum to take action. The vast majority requires a simple majority of the full council. Several charters require super majorities for certain types of actions, such as ordinance enactment or bonding approval. Nearly all charters require super majorities for the passage of emergency ordinances.

Ordinance enactment process: Nearly all council-type charters require the council to act only by order, resolution or ordinance. Although only three charters define the practical difference between these types of action, most charters specify what must be accomplished by ordinance. Typically, actions requiring an ordinance include: adopting or amending any local code, providing for a fine or penalty or establishing

any rule which could result in a fine or penalty if violated; granting or extending a franchise; conveying or leasing property of the town excepting tax acquired property; or amending any previously-adopted ordinance. Sometimes charters invoke the ordinance process for budget or borrowing authorization as well, but financial actions are more typically accomplished by resolution, with separate and express public notice or public hearing standards.

Not all charters establish a public hearing process before an ordinance is adopted by the council. Over 20% of the non-town meeting charters make no mention of a public hearing process. For the charters that do establish a public hearing prior to a council vote, there are two approaches. Slightly more than half of those 40-odd charters create a strong public hearing process whereby no ordinance can be enacted after an initial public hearing if the draft ordinance has been significantly amended as a result of the first hearing. To enact such an ordinance, the council must hold a subsequent public hearing to air those amendments. The remaining 20-odd charters contain a weaker, one-time-only public hearing process.

Three charters require a super majority (majority of the full council plus one) to enact any ordinance. Almost all charters require a super majority to enact an emergency ordinance; i.e., an immediately effective ordinance that can be enacted without the normal notice/hearing requirements.

With unique sunset language, the Calais charter automatically repeals all ordinances ten years after their adoption; a provision that would appear to have the obvious effect of achieving regular ordinance maintenance.

Abstention: Many charters require roll call voting by the council - yeas or nays - for action by ordinance or resolution. A councilor must declare a vote on the record either for or against. Three charters (e.g., Bar Harbor) go beyond this implication by discouraging or prohibiting an abstention from voting unless a bona fide conflict of interest is declared. This anti-abstention language usually requires that an unfounded abstention be recorded as a positive vote. One charter contains anti-abstention language such as this for the school board only.

Conflict of interest: 30-A MRSA § 2605 establishes a minimum standard governing conflict of interest. That statute makes "voidable and actionable" decisions made by municipal agencies, authorities, boards, commissions and offices when those decisions could involve the financial interests of the decision-makers. Under the statutory standard, a municipal official with a 10% or greater interest in a business or economic entity is automatically considered to be financially interested in that business. When such an official is expected to make a decision affecting a business in which the official is interested, the remedy is declaring the financial interest and removing him or herself from the decision making process.

Half the municipal charters in Maine take on the issue of conflict of interest; half are silent on the subject. It is typical for a charter's conflict-of-interest language to extend the prohibition to all municipal officials and employees. Beyond that, the difference in strategies focuses on the threshold of financial interest that invokes the prohibition. The most often-used threshold throws the 10% standard out the window and replaces it with the strict "any financial interest". Following that in use is the somewhat vague "substantial financial interest". A handful of charters simply adopt the 10% standard of Title 30-A, and one charter defines financial interest as a 5% financial interest in the affected business, economic entity or contract holder. Five charters contain language apparently from the Private and Special Act era that establishes a strict-standard prohibition but fails to include a remedy; that is, the charter flatly prohibits a municipal transaction where any conflict of interest exists.

Anti-nepotism/incompatibility of office: Nearly every charter contains express language prohibiting a municipal officer from holding any other elected or appointed municipal office or position of employment during the term of office which he or she was elected. Also, most charters, simplifying and

strengthening the prohibited appointments statute at 30-A MRSA §2606, prohibit a former councilor from holding any compensated appointive position or employment until one year after the expiration of the term for which he or she was elected.

Beyond these near-boilerplate charter provisions, few charters further define automatic or per se incompatible positions.

A handful of charters, with what appears to be some old Private and Special Act language, expressly prohibit "a teacher" from being on the council. These anti-teacher provisions do not take into account whether the teacher is employed by local or distant school districts, or even whether the teacher is employed by a public school system at all. One charter does not allow anyone to be appointed to any municipal board whose spouse is a municipal employee.

Less than five charters contain any express anti-nepotism language. Auburn recently clarified its anti-nepotism provision to read:

"The mayor, the members of the city council, city manager, deputy city manager, members of the school committee, and the superintendent of schools shall not be interested directly or indirectly in any contract of the City nor shall their spouses be gainfully employed as city employees. Once the foregoing appointed or elected officials have assumed their positions, their children may not thereafter be hired as city employees."

The Old Orchard Beach charter prohibits the appointment of a councilor's spouse to any compensated town office position or departmental employment under the council's control, except that spouses employed previously to the councilor's election may maintain their employment but must forgo any salary increase while their spouse is on the council.

Appointment authority: Charters generally designate which municipal offices are filled by council appointment and which positions are appointed by the manager. The variations are too numerous to detail here. The council or board of selectmen always appoint the manager except that in most elected-mayor municipalities the council's role is to confirm the mayor's nomination. As well as the manager, the council typically appoints the municipal attorney, treasurer, clerk and assessor. The council also appoints membership (or confirms the mayor's nominations) to all municipal boards, commissions or trustee positions, with the exception of the elected school board. Two charters appoint one council member onto the otherwise elected school board, and the Biddeford charter makes the mayor the ex officio chair of the school board.

By charter language, municipal managers are typically given the authority to appoint the tax collector and the various department heads, such as the fire and police chief, the director of public works, the welfare director, and so on. In some cases the manager fills practically all offices by appointment, except municipal board membership, and with the further exception that final say on the municipal attorney is generally granted to the council.

At least two charters include as their centerpiece a clear diagram of the structure of the municipal government, an example of which is reproduced here.

Personnel system: Well over half of the existing municipal charters establish some form of personnel management system. As a rule, the municipal manager is designated the personnel director and assigned the task of promulgating personnel rules. Some charters go into considerable detail with regard to what policies and practices such rules will cover. Nearly half of the 40 charters that establish a personnel system also create a personnel board to assist in the rule-making process, advise the council on issues of

personnel management, and act as an appeals or grievance board.

Several town charters (e.g., Linconville, Veazie) adopt an affirmative action policy. Fairfield's charter contains a provision that favors the municipality's employment of Fairfield residents when competing candidates for employment are otherwise equally qualified.

Budgeting and Appropriations

Fiscal year: A third of all charters are silent as to the municipal fiscal many charters that describe a fiscal year also grant to the council in the same breath the authority to change the fiscal year at its discretion. Over 30 charters align their fiscal year with the state's (July 1-June 30); half that number designate the calendar year as the fiscal year.

Budget adoption process: 80% of the existing charters create a more or less explicit budget adoption process. The essential order of the process is relatively standard. The process begins at a designated date before the beginning of the fiscal year- typically 35 or 60 days but in some cases as many as 120. It is usually before that designated date that the school board is required to submit its budget to the town or city manager or administrator. No later than the designated day, the manager presents his or her total budget to the council or board of selectmen. The municipal officers review the budget and amend it as the board or council feels necessary. A public hearing is then scheduled and held on the budget as proposed. After making any changes the board or council feels appropriate in light of the public hearing, the budget is either adopted by the council or-where the council lacks authority-advanced to the town meeting. Several charters, even where the council adopts the budget, make no provision for a public hearing. A few charters lean in the opposite direction by paying special attention to the budget's public hearing process. The Town of Orrington, for example which enacts its budget in open town meeting, has a charter provision that requires that the notice of the pre-enactment public hearing be delivered to every house in town.

The dozen or so variations on the general budget adoption process are found in the charters that establish budget committees. The review by the budget committee necessarily adds at least one additional step in the process, but there is considerable variation as to when in the process the budget committee review occurs. Some charters orchestrate the budget committee review to occur simultaneously with the council's review and schedule joint meetings among the council, the school committee and the budget committee prior to, or as part of, the public hearing process. Some charters give the proposed budget to the budget committee for recommendation even before the budget is ever submitted to the council. Some charters schedule the budget committees review only after the budget has been first worked over by all the other players.

Under York's charter, it is the budget committee that actually crafts the budget; the school committee and municipal officers are only allowed to make recommendations on the budget committee's product to the town meeting. A Superior Court recently vacated those provisions as a result of its findings that the charter impermissibly reversed the respective roles of the school and budget committee.

Expenditure limits: Although a number of municipalities have imposed upon themselves expenditure limits over the past few years, currently only Bath's charter contains such a provision. After carving out a number of special revenues and expenditures, the charter caps expenditure appropriations at the level of the previous fiscal year as adjusted by the national Consumer Price Index.

Budget and Finance Committees: There are 18 budget committees and three finance committees created by charter. The budget committees created by charter serve towns with populations ranging from less than 1,000 to 10,000 inhabitants. A third of the budget committees are entirely appointed by the

council or board of selectmen; a third are entirely elected by the voters at large; and a third are filled by a mixture of appointment and election. The finance committees created by charter serve larger, non-town meeting municipalities (Biddeford, Lewiston and Orono) and tend to be subsets of the council. With only one exception, budget committees (as opposed to finance committees) have been created by charter for town meeting municipalities.

Budget committees tend to be large for municipal committees. A 15-member budget committee is common, and membership goes as high as 25 elected members. Budget committees are commonly granted special and early access to the budget documents and supporting material, the manager's and council's attention, and a privileged status during the public input and hearing processes. Beyond that, the budget committee's role as designated by charter goes no further than making formal recommendations to the legislative body with regard to each appropriation proposed in the municipal and school budget.

Form of budget: It would be impossible to categorize in any simple way the wealth of charter language governing the actual form of the appropriation resolve. Some charters list the several specific departments around which the budget must be organized. Other charters require budgeting around "cost centers" or "program centers" in an attempt to encourage an outcome-based rather than bureau-based budgeting process. Many charters, as might be expected, require an itemized budgeting format. Under this system, the final adoption of the budget constitutes an appropriation by line item which has ramifications with regard to overdraft prohibitions, supplemental appropriation authorities, and account transfer authorities. At least a dozen charters, following a different strategy, require a line item budget but then carefully distinguish the form of the budget from the form of the appropriation resolve by expressly authorizing the council to enact only gross budget appropriations per department, office, or agency. The Freeport charter, as another example, obliges the council to adopt the school budget as a gross appropriation, and subsequently obliges the school committee to certify back to the council a plan for the appropriation expenditure by line-item.

Virtually all charters that create a procedure of budgeting expressly require a budget that is balanced between appropriations and revenues. Several charters carefully limit the authority of the council to play games with revenue projections. The most common method of so-limiting the council is to require its reliance on the manager's revenue projections. Under South Portland's charter the city manager is required to formally certify to the council the specific evidence supporting all projected increase in any miscellaneous revenue line compared to revenue actually received in that line in past years. In another apparent attempt to secure a reasonably reliable revenue projection, Hampden's charter calls for the calculation of revenue on the basis of the last quarter of the existing fiscal year and only the first three quarters of the upcoming fiscal year.

Many charters split the budget into a school and non-school component. Bath's charter joins several others that break the budget into multiple, separate, stand-alone components, for example, the operating budget, school budget, sewer budget and CIP budget.

Orrington's charter attempts to throw light on all program expansion intentions by requiring the budget to identify all projected program costs with virtually no change to existing program design, and then compare those figures in a side-by-side against total program appropriation requests.

At least a half dozen of the town meeting charters prohibit the town meeting from increasing any appropriation, either at open town meeting or by petition, over amounts recommended by the selectmen or council in the budget.

Several charters require at least 2% of the total budget to be set aside in a sinking fund if there exists any outstanding debt. Other charters create similarly funded reserve accounts that serve to accept year-end

surplus, re-fund overdrafted accounts to zero-balance, top-off the sinking fund to its charter-required levels, before lapsing any into surplus.

Work programs: Roughly half of all existing charters share nearly identical language requiring the various municipal departments to submit to the manager detailed work programs as part of either the budget development or budget administration process. Presumably, the work program requirement is of a piece with an overall program budget method.

Capital programs: Nearly half of all charters also require the annual adoption of a capital program (a.k.a., capital investment/improvement program, or CIP). A dozen town meeting charters require the development of a CIP and half of those delegate the job in whole or in part to the planning board. Typically, the capital program document, which projects out for at least five years all major capital improvement expenditures, is presented to the council or selectmen by the manager or planning board a month or two before the budget process begins. Many of these charters require the development and adoption of the School Committee's CIP as well. Under council/manager charters, the council holds a public hearing on the proposal, tinkers with it as the council sees fit, and adopts the CIP. Under town meeting communities, the CIP is often merely an advisory document or a required part of the town report, rather than a formally adopted plan. In either case, to what extent a CIP is binding on the budget it is often unclear by the charter language. At least one charter (Brunswick) expressly establishes the CIP's status as non-binding. By the terms of Van Buren's charter, on the other hand, the current year's CIP allotment must be included in the annual budget and the annual CIP appropriation must not be less than at least 4% of the total budget raised by property taxes.

Continuing resolution: 90% of the non-town meeting charters address the issue of continuing resolution; that is, to what degree can the council appropriate money in an existing fiscal year without an adopted budget. Over half of those charters grant the council an unlimited "continuing resolution" authority. Sixteen charters limit this practice in a variety of ways. A mere handful of charters prohibit it completely by simply establishing a date certain when the budget must be adopted. The more typical approach is to automatically adopt-by the strength of the charter language alone - the manager's proposed budget if the council has failed to adopt an alternative budget by the date established. One charter allows for continuing resolutions, but only up to one third of the budget appropriated for the last fiscal year.

Transfers: There are a variety of charter strategies covering the authority of the manager and/or council to permit the transfer of funds during the fiscal year from one account to another or from one department to another. A charter's transfer authority language is largely dependent on the form of the appropriation resolve or the town meeting warrant where appropriations were enacted. Where gross appropriations were enacted, the legislative body is essentially permitting transfer within the appropriation. Where appropriation is accomplished by line, an unauthorized transfer could be a real problem. With regard to the need for special transfer authority, several charters appear poorly coordinated inasmuch as they establish gross appropriations to departments but require council approval for transfers within those appropriations. None of the pure town meeting charters permit the board of selectmen to transfer funds between general classification accounts or departments, although several expressly authorize within-department transfers by the municipal officers.

There are a variety of approaches to transfer authority. Typically, transfers are only authorized in the last three months of the fiscal year. The favorite approach (excepting the pure town meeting charters) authorizes only the council or selectmen to transfer funds, upon the recommendation of the manager, either within a department or between departments. The next, most often used approach allows the manager to transfer within a department, but council/selectmen approval is required between departments. Another common approach prohibits transfers but establishes a reserve fund to collect unspent appropriations at the close of the fiscal year from which overdrafted accounts are refunded. A

few charters permit transfers only by a super majority vote of the council. Two charters (Oakland and Mechanic Falls) cap the amount of money transferred at a certain percentage of the total budget.

Lapse: Nearly every charter that speaks to the issue requires every account to be lapsed into surplus at the close of the fiscal year, to the extent the account has not been encumbered, with the universal exception of capital accounts. With regard to capital accounts, most charters go on to require the lapsing of any capital account that has been idle for three years. Beyond the general language allowing for the carryover of "encumbered" accounts, some charters create reserve accounts for specific purposes and block all surplus in those accounts from reverting to the general fund. Portland's charter, for example, creates a reserve fund for the purpose of the city's self-insurance program.

Citizen Access

Initiative and Referendum: Provisions of municipal law in Title 30-A provide methods by which citizens can petition to have the legislative body of the municipality consider a proposed action (initiative), or review an action taken body by bringing that action back to a direct vote of the entire electorate (referendum). In the absence of any charter provision to the contrary, these Title 30-A methods (sections 2522 for initiative, and 2528(5) for referendum) would be available. The statutory law generally does not limit the substance of the initiated or referred action, although there is case law that allows the municipal officers to refuse petitions in certain very limited circumstances.

The initiation of either of these procedures under statutory law, unless the municipal officers order the initiative or referendum election on their own authority, requires a petition to be signed by at least 10% of the number of voters who voted at the last gubernatorial election. By charter, the method of petitioning for initiative or referendum can be made more or less difficult than the statutory standard, or even eliminated entirely if the electorate ever would adopt such a self-limiting charter provision.

Slightly less than half of all existing charters limit to some degree the substance of initiated or referred questions. Thirty charters, all with generally the same language, prohibit initiative or referendum petitions that would appropriate money, adjust the budget, levy taxes, force an official's appointment or removal, or adjust salaries. The 45 remaining charters, either expressly or by their silence, do not limit the substance of an initiative or referendum petition.

With regard to the number of petition signatures necessary to bring an initiated or referred question to an election, about half of the existing charters require a larger percentage of voter signatures than is required by state law. About 30 charters are silent on the matter, refer to the state law or parallel the state law standard. Half a dozen charters establish a fixed number of signatures-between 125 and 500-rather than a certain percentage of the electorate. The remaining charters tend to establish a petition standard of from 5-20% of all registered voters rather than merely the number of those voting in the last gubernatorial election.

After the certification of the petition's sufficiency, there remains the issue of scheduling the election. Approximately one third the charters require that the election be called after thirty days but no later than one year from the certification of petition sufficiency. The majority of charters, in apparent alignment with the 60-day language in the Title 30-A initiative statute, require the election to be called within 60 days, unless a regularly scheduled election will occur within 90 days.

A couple of charters establish a quorum requirement of 20% of all registered voters at any initiative or referendum election.

Seven charters establish a "cooling off" period of either 120 or 180 days before an initiative or

referendum petition can again be accepted on the same issue after an initiative or referred question fails at election. One charter establishes a one-year cooling off period.

There is, finally, an issue regarding the distribution of petitions. 30-A MRSA §2504 is a section of law that allows for the free circulation of a local initiative petition as an alternative to a system established in many charters where the town clerk holds the petition for signing at the municipal office only. This section of law, enacted in 1989, expressly overrides any charter provision to the contrary, and there are a number of charters which have yet to amend their charters into conformance with the law.

Recall: As indicated above, to establish a process by which the municipal officers or school committee members can be recalled by the voters the wording of state law requires the adoption of a charter provision. There are 35 charters with recall provisions. The number of petition signatures necessary to initiate a recall election varies widely. Two charters require a fixed number of signatures (500 and 3000) on a recall petition, the remainder require a certain percentage of the registered voters ranging from 10% of the voters at the last gubernatorial election to 25% of the total number of registered voters.

Ten of the recalls establish a cooling off period of 120-180 days if the recall petition drive results in an insufficient petition or the recall election fails to oust the councilor. Two charters establish quorum requirements at recall elections, one of which is very substantial (40% of qualified voters). Many charters require the recall petition to indicate a reason why the councilor or selectman should be recalled, and as many as three charter provisions require that recall petitions can be initiated only "for cause" although it is very unclear how "cause" is established or whether a showing of cause is, indeed, a burden for the petitioners to meet.

One charter refers to the recall standards in state law, of which there are none. Another charter prohibits a successfully recalled elected officer from being appointed to any position in the municipality for a period of two years. At least one charter does not accept recall petitions if the municipal officer's term expires in less than a year.

Nominations and Elections: Although partisan election practices on the municipal level may have been more common in the past, there are now only three charters that establish a partisan contest for the position of elected municipal office.

Beyond those exceptions, it would be impossible and especially unhelpful to detail the myriad insubstantial and arcane differences between the nomination and election procedures described by charter versus those procedures as detailed in Titles 30-A and 21-A. Suffice it to say that even though Maine law allows municipalities to establish unique nomination and election procedures by charter, few municipalities that have recently created or revised their charters are taking on the task. A moving away from unique election procedures can be seen as a trend in charter development.

Given that it is becoming more common for municipal charters to simply reference statutory election procedures, one caution should be noted. There are municipal election procedures in Title 30-A and state election procedures in Title 21-A, and within Title 30-A there are cross-references to applicable Title 21-A procedures. Some of the election procedures in Title 21-A, however are not at all applicable on the local level. For this reason, a blanket charter statement establishing a conformance to the nomination and election procedures established by Titles 30-A and 21-A would be an overly broad reference and could conceivably come back to haunt the municipality. A more targeted reference would establish a conformance to the nomination and election procedures established in Title 30-A, and such additional procedures established in Title 21-A that are expressly or reasonably applicable to municipal elections.

Bonding authority and required referendums: Of the 44 charters in Maine that establish the council as

the municipality's sole legislative body, 16 place a limit on the council's authority to issue bonds without ratification by the voters at large. These bond-limiting charters with only one exception establish a bond value threshold before the bond referendum requirement kicks in. Most of those threshold levels are straightforward dollar figures per single-issue bond and/or aggregate bonds, ranging from \$25,000 to \$500,000. Alternative thresholds established by charter include 10% of the last fiscal budget, 15% of the present fiscal year tax levy, or .0007 of the municipality's last state valuation.

Right to Know: Most every charter establishes an open meeting, notice of meeting, and executive session policy by either referencing the Freedom of Information Act law at 1 MRSA § § 401 et seq. or by actually including in the charter substantially the same "right to know" requirements.

The one area where all but two charters coordinate poorly with the state's right to know law is with regard to the town or city manager's removal process. With almost no exception, the charter process of manager removal provides the manager a right to a single public hearing, if he or she so desires, before the council or board of selectmen takes action. Indeed, this right to a public hearing is also part of the statutory town manager plan at 30-A MRSA § 2633, and there is nothing illegal or inappropriate about this charter language on its face. Maine's Freedom of Information Act, however, also creates a right for a municipal employee to have his or her performance evaluated in executive session, and it is clear that should any manager request executive session deliberations prior to a board's removal action, that manager would be entitled to a behind-closed-doors review. It is only the charters of Bath and Lincolnville that expressly coordinate the Right to Know law with the manager's removal process.

Charter amendment procedures: By statute, a charter must be created, revised (i.e., fundamentally changed) or amended according to the procedures of 30-A MRSA §2101 *et seq.* It is not entirely clear to what degree alternative charter amendment procedures may be established by charter. To create or revise a charter by the statutory procedure, the voters of the municipality must first vote to create a charter commission to draft the charter. The municipal officers can place that question before the voters on their own, or they can be forced to do so by a petition signed by qualified voters in number at least equal to 20% of those voting in the last gubernatorial election. To simply amend an existing charter, the process is the same except a charter commission is not required merely a public hearing. (The distinction between a charter amendment and a charter revision is not simply described. For guidance, refer to a May 1982 TOWNSMAN Legal note on the subject.) All votes regarding a municipal charter must be accomplished by secret ballot.

At least a dozen charters incorporate some charter amendment language, although no bold deviations from the statutory design are attempted. The amendment procedures that charters contemplate for themselves do not become embroiled in the subtle distinction between charter amendment or revision, preferring instead to focus on amendment procedure only. Also, the favorite charter petition requirement is 20% of the currently registered voters rather than just 20% of the number of voters at the last gubernatorial contest. Beyond these flirtations, the charter amendment language in the municipal charters in the state is perfectly aligned with the statutory process.

With a burst of energy, two charters call for an automatic, periodic (five year or ten year) formation of a charter commission to review the charter and make recommendations, either in the form of revision or amendment, as deemed appropriate. On the other side of the coin, at least one charter still details the procedure to petition the Legislature for a charter amendment, fully 22 years after such a procedure became extinct.

Conclusion

Behind a charter's stuffy boilerplate language, and just underneath the tedious legalistic detailing, there

appears to exist at least three related tensions at work that serve to give energy to municipal charter development in Maine.

One such tension is the ever-present contest between Home Rule authority and the dictates of state law. The York charter, for example, ran abruptly into the preemptive force of state law when it attempted to create in its Budget Committee essentially a third body of municipal officers. Looking beyond the issues associated with the York charter, it would generally appear that when a charter imposes stricter standards on local government than established by state law, the charter authority will go unchecked. Examples of this type of charter activity would include attendance requirements, ethical codes, recall procedures, term limits and budgeting constraints. What is less clear entirely is the degree to which charter provisions that act to improve administrative efficiencies can be enforced or may otherwise face preemption by the Legislature. Just three years ago, the Legislature saw fit to preempt charter authority over a very narrow, local choice, petition process issue.

Another tension simmering below the otherwise placid surface of municipal charters concerns who within the community controls charter maintenance and development. In most cases, the fundamental purpose of the charter is to vest powerful decision-making and policy-making authority in a representative body rather than the electorate at large. It is not possible on the other hand to suppress the observation that charter amendment and revision activity in recent years has been promoted and adopted precisely for the purpose of checking the authority previously granted to the electors' representatives. It is these often-competing interests of the voters to simultaneously establish both efficiency and accountability in their local government that drives the evolution of municipal charters.

Perhaps the underlying dynamic that seems to drive charter development concerns the fundamental purpose of the charter. Is it intended to be a process document--a mere guidebook to municipal procedure for the benefit of municipal officials and citizens--or is it the intention of the community to create by charter an abiding policy document that delegates the administrative detailing to less entrenched and more easily maintained administrative codes? Specific administrative detailing within a charter yields clarity, but often at the price of flexibility. Policy-rich charters, on the other hand, provide more definition and personality to the municipality and tend not to hamstring the local government when a unique local circumstance demands a certain municipal reaction or an abrupt change to the state's general statutes make a charter provision non-conforming with law.

Municipal charters, in short, are a juggling act that never rests. State law and local control; the interests of the municipal government and the sometimes competing interests of the voters at large; the policy goals versus the procedural purposes of the actual document, these are all driving forces working at a constant interplay behind the charter. It would almost seem that as solid and impregnable and verbally stuffy as the charter document may appear, it is more actually a snapshot of the moving municipality in a peculiar instant of repose.

Some Advice on Charters - Maine Townsman - August 1992

Some Advice on Charters

(from *Maine Townsman*, August 1992)
By Jo Josephson

This Maine Municipal Association publication is presented for "Classroom Use Only." Its intended use is to stimulate and aid in discussion and role playing within a classroom setting.

They should be tailored to the community

Municipal charters. They are often seen as the "blueprints" for governing a community and as such they are often called the "constitutions" of local government.

They are often also seen as a vehicle for those seeking to change local government and as such they are often also a source of fear for those fearing change.

Which is to say, they are also adding fuel to fan the flames of the factions within a community. Which is to say, once in a very rare while, a charter causes such dissension within a community, it is challenged in court.

Consider for a minute, the Town of York's controversial charter, which was adopted by its residents last November. It has not only produced a sharply worded "minority report" from dissenting members of the charter commission, it has also produced two lawsuits pitting the town, the school committee and the charter commission against each other.

For those unfamiliar with the highly publicized case, the residents of York, after numerous failed attempts over the years to switch from an open town meeting to a representative council form of government, adopted their first charter on November 5, 1992 by a vote of 2,427 to 1,758.

What they adopted was a charter that kept the town meeting-selectman-manager form of government and added to it a system of secret ballot voting on all issues and a budget committee with broad powers, including the final authority to determine the dollar amount for each article in the school budget.

To date, York County Superior Court Justice William S. Broderick has ruled that those portions of the charter dealing with the school budget are in violation of state law, "usurping" the authority of the school committee. He has also, at the request of the selectmen, put a temporary restraining order on certain provisions in the charter.

The case went back to the York County Superior Court this month; some predict it will eventually wind up in the State's Supreme Court as a test case.

But this article is not about the pros and cons of the controversial York charter. It is noted here merely to underline the fact that the road to charter creation, adoption, revision, or amendment is underlain with potential land mines, both legal and political.

What this article is about is the sharing of some seasoned advice on charters from four towns which have been through the charter process both successfully and unsuccessfully. But first a bit of background on charters in general. (For detailed information consult the references listed in the sidebar).

A Brief History of Charters in Maine

To begin with, it should be understood that when the term "charter" is used in this article, it is not referring to the act of the legislature by which a town or city is incorporated or "chartered". Under this definition, all towns and cities in Maine are "chartered".

When the term charter is used in this article, it refers to the document that serves as a local "constitution", spelling out the distribution of power between the legislative, executive and administrative branches of government. Under this definition, approximately 75 towns and cities in Maine have charters.

That said, municipalities are not required to have the so-called constitutional-type charters, but by adopting such a charter, a municipality can custom design its form of government to fit its particular needs.

Drawn up by a citizens committee (charter commission) and approved by the vote of the residents of the municipality, the charter reflects the needs and values of a community. As such, no two charters should be exactly alike.

While there are numerous reasons to adopt a charter, there are at least three things a municipality cannot do unless it has adopted a charter:

1. It cannot change its legislative body,
2. It cannot recall a municipal officer (selectmen, council member, mayor) or school committee member, and
3. It cannot establish a different method of selecting its school committee members,
4. nor can it alter their terms as set forth in Title 20 M.R.S.A. Section 2301.

As noted above only 75 Maine municipalities have such charters. Auburn was the first Maine municipality in 1917 to adopt a council-manager form of government. To do so, its charter had to be approved by the State Legislature before its residents could adopt it.

In 1969, the Legislature pulled out of the charter process, with the adoption of the "home rule amendment" to the Maine Constitution. Among other things, the enabling legislation that went into effect in May 1970, gave municipalities the power to adopt or amend municipal charters without the involvement of the Legislature and spelled out in detail the procedures for adopting or amending those charters. (see 30-A M.R.S.A., sections 2101-2109).

Since then, approximately 16 Maine communities have adopted a charter under the powers of home rule.

A Brief Charter History of Four Municipalities

Two of the towns interviewed by the TOWNSMAN were successful in their charter efforts; two were not. Their history follows, setting the stage for their advice.

Lisbon. Population: 9,457. Lisbon has tried three times, each unsuccessfully, to adopt a charter. The first time, in 1983, a charter calling for a council form of government with a town meeting override was defeated by 50 votes. The last two attempts to create a charter commission in 1987 and 1991 were defeated.

Wales. Population: 1,223. Wales adopted its first charter on November 5, 1991 by a vote of 222 to 116; it was the third attempt at a vote on the charter due to the fact that at two previous meetings the proposed charter could not be voted upon for lack of the required voters. The charter does not change the town meeting form of government in Wales; it merely sets down in one place the procedures currently used to run the town.

Fairfield. Population: 6,718. Fairfield adopted its town meeting-council-manager form of government in 1979. An attempt to amend the charter to do away with town meeting in 1989 failed. An attempt to amend the charter in 1991 to, among other things, appoint the town manager and department heads on a one-year basis and to limit the public's right to overrule actions of the council was defeated by a vote of 912-782.

Gray. Population: 5,904. Gray's council-manager charter was adopted in 1969. Since then it has been amended four times. In November of 1990 residents voted overwhelmingly 1,598 to 791 in favor of several amendments to the charter, including one that made provisions for the recall of elected municipal officials.

Some Advice on Charters

Every town has its own political history; pay attention to it.

"Every town has its own issues; there is no one solution; look at your own community," says Lisbon Selectman David Bowie, who chaired Lisbon's one and only charter commission.

MMA's staff attorney William Livengood couldn't agree with Bowie more. When asked by charter commissions for copies of the charters of other towns, he advises them to look at the issues in their own town first; to look at what is working and what is not working in their town.

"Don't adopt something just because other towns are doing it; if it doesn't fit your political history it might pass, but it probably won't stick," says Livengood.

Charters usually mean change; make sure there is a compelling reason for making the changes.

Apparently it was not enough that there was abysmally low attendance at town meeting in Lisbon or that the meeting sometimes lasted four nights.

Apparently it was not enough that the vague wording in the Fairfield charter had resulted in several lawsuits.

"You succeed when you respond to genuine concerns in the community, when the residents can relate the change to real issues," says Gail Walker, who served on Gray's Charter Commission as a representative of the town council. Above all, "the change should not be frivolous or transitory," says Walker.

Walker notes that what sparked the formation of the charter commission in Gray was a lawsuit filed against the town by a member of the council and his real estate partner challenging the legality of a mobile home park moratorium the council had imposed until it

developed a state-mandated mobile home park ordinance.

The suit prompted some questions about a possible conflict of interest. "While there is nothing in the state statutes that forbids a councilor from suing the town, the situation made people realize that they had no provision in their charter to recall this councilor or any other one if they wished to," says John Welch, a member of the Gray Town Council, who spearheaded the move to add a recall provision to the town's charter.

Welch stresses the fact that "the recall amendment itself was not targeted at any one individual" but was introduced to fill what he called "a glaring void" in the charter, a glaring void brought to their attention by the lawsuit.

Charters should not be political tools.

Fairfield's proposed charter limited the terms of the town manager and the department heads to one year. It was defeated.

York's charter created a budget committee with broad powers, including the final say on the school budget before it went to the voters. It was adopted by the residents but that portion of the charter dealing with the budget committee has been contested by the school committee and overruled by the court.

The most common reasons for adopting a charter are to change the legislative body and/or to give citizens the power to recall a municipal official.

You do not have to nor should you change your form of government because you are having problems with a particular individual. "There are other ways of dealing with personnel issues, than changing your form of government," says Livengood.

Nor should you use the charter to usurp the authority of another body, as in York, where Superior Court Justice William Broderick has ruled "that the Budget Committee created by the York Charter, in its present form, illegally usurps power and authority reserved to the School Committee."

As noted above, York's charter created a budget committee with broad powers. A budget committee that had the power over not only the municipal budget but the school budget as well. A budget committee that had the last say on the budget before it went to the voters, who in turn had no recourse but to accept or reject it by secret ballot.

In his ruling Broderick argued that "the Legislature has never expressly authorized the establishment of municipal budget committees with the authority to overrule school committees."

Politics aside, it should also be noted here that it is a misconception that a charter is needed when a town wishes to adopt a town-manager form of government, advises MMA's Livengood. If you switch to a town manager form of government you might want to consider the state's so-called "town manager plan" and bypass the need for a charter. Livengood sees the plan as a "prepackaged charter."

While there was no "legal" need for a charter in Wales, the town went ahead with one anyway, as a matter of codifying its structure. Another good, but not necessarily compelling, reason for adopting a charter.

The terms of the selectmen had been increased, but there was no formal record of it, explains George Gustin, who chaired the charter commission in Wales. "It made for a real hectic mess trying to figure out whose term expired when," he says. The charter was seen as a document that would take care of all that.

It was also seen as a document to attract young blood in the running of the town, explains Richard Wells, who served as the charter commission's secretary. "If we were going to attract new people, we needed something to show them how the town was run," he says. The charter would take care of that.

MMA's Livengood notes there are other ways other than through the adoption of a charter to codify a town's structure: through an administrative code or through ordinance.

You have got to prove that the democratic process is not being lost but is being refined.

The retention of town meeting appears to have been a key factor in the passage of York's controversial charter. They had tried to do away with it before and failed; this time they retained it and won. In Lisbon, they tried to do away with it and lost. In Wales, they retained the town meeting and won. In Fairfield, they tried to cut the people's right to overrule the council and lost.

"Town meeting is pure democracy; there is no purer form of democracy," says Ed Wall, who was the only member of the Lisbon Board of Selectmen to oppose putting the question of forming a charter commission on the Lisbon ballot last year.

Wall also contends that town meeting is a 'cleansing process'. How many times has he heard his colleagues say: "Town meeting will never go for that... It's amazing how many bad ideas are shelved before they get to town meeting," says Wall.

Wall believes that people (the town meeting) are a better gauge of the issues than the elected officials. "The minute someone gets elected to an office they are brought into the fold and become very timid," says Wall.

He also believes that those who want to change to the council form of government have the attitude "that people don't have the intelligence to govern themselves."

"It's a political power game," says Wall of the whole charter process in Lisbon; "it's trying to consolidate power in the hands of a few."

Lisbon's Bob Berube, also a member of the board of selectmen, disagrees with his colleague, saying that from an opponent's perspective "it is easy to promote scare tactics, arguing that by eliminating town meeting you are putting power in the hands of the few."

He says he has seen this argument used in many small towns, but he questions whether Lisbon is a small town any more, with its population of 9,000 plus.

"It's a real paradox," says Berube. "In theory and in small towns the argument about town meeting as a form of pure democracy is true. But it's not true in Lisbon, where there are 6,500 registered voters and only 2 percent to 3 percent of them vote."

Berube speculates that if the Lisbon Charter Commission had been approved, it might have been successful in getting a council-manager charter approved, if it had retained some form

of the town meeting where the town meeting vote was required for expenditures over a certain amount and for bonded indebtedness.

"Perhaps this would have allayed the fear of losing control," says Berube.

When Wales wrote its first charter last year, to underscore the fact they were not doing away with town meeting, they included the following sentence: "The legislative authority of the Town of Wales shall continue to be vested in the Inhabitants of the Town acting by means of the Town meetings."

So why did they adopt a charter? According to George Gustin, who chaired the Wales Charter Commission, Wales merely wanted a single document that would formalize what it was already doing and to use that document to increase public participation by attracting "young blood" to the governing process.

The original mandate in Fairfield had been to clean up the wording of the charter, to make it less ambiguous and less susceptible to lawsuits, in other words to make it more workable, says Fairfield Councilor Dawnalyce Clifford who initiated the charter commission.

The final product limited the terms of the town manager and department heads, and equally important in the minds of the opponents limited the public right to overrule actions of the council, a right they had previously held. The charter was defeated.

Assess the mood for change in your community.

There has got to be some "restlessness in town," say the folks in Lisbon. Listen to the "talk on the street." Read the letters to the editor of your local paper, advise the officials in Gray.

Gray Selectman, John Welch says, "From the outset there was a feeling that a great majority of the residents were in favor of the proposed change in the charter."

Both Donnell Carroll, who chaired the Gray Charter Commission, and commission member Gail Walker concur. They note "the talk on the street" and the "number of letters to the editor" that appeared in the local paper on the conflict of interest-recall issue, well before the council's initiative to establish a charter commission.

They also note that a lot of people wanted to be on the charter commission, indicating an active interest in the project. "More people ran than there were slots for," says Walker. According to law, three members are appointed and six are elected.

Carroll also notes there was a sense of change in the air: the town had just hired a new manager; it had also just changed its fiscal year.

David Bowie, Lisbon's charter commission veteran, suggests another way of assessing/testing the municipal mood for change is to present an article at the May town meeting, asking for money to support a future charter commission.

"If there is no support for the article, then it may well indicate that there will be no support for the charter commission and the charter it produces; if there is support then put the question of a charter commission on the November ballot," says Bowie.

Lisbon's Jean Harris, who was on the Lisbon Board of Selectmen for seven years, in addition

to serving on its one and only charter commission, says another way of assessing the mood of the people is to conduct a survey.

Ask them if they attend town meeting. Ask them if they are satisfied with how their local government is run. Ask them if they think they are well represented. Ask them if they think the town would be better represented by a council form of government.

Then analyze the results. If it appears that a change is desired, then and only then ask to form a charter commission, says Harris.

As Lisbon's Berube phrases it, there has got to be a "restlessness with how town government is going. The people have got to want a more efficient government, if you are going to successfully switch to a representative form of government," says Berube.

In hindsight, there were signs that Fairfield might not have been in the mood for change long before the vote of the proposed changes occurred, recalls Fairfield Charter Commission Chair Clifford Clark.

Not only was the idea for a charter commission proposed by the council, rather than by a citizen's petition, the vote (149 to 148) to establish the commission was lukewarm at best.

But that was not the only indicator: of the six elected positions to the commission only one person, Clark, openly ran for a seat on the commission; the rest were write-ins. The final vote on the proposed charter (584 to 892) was a resounding no!

Do some up front public education.

Lisbon's Harris suggests that before broaching the idea of a charter commission it would be a good idea to hold public meetings-but not your traditional public meeting.

"Go to the many organizations in town. Go to the Chamber of Commerce. Go to the senior citizens groups. Explain to them the basis for a charter and what the intent of the current movement is. Be up front and anticipate their fears. Be sure to explain that the intent is not to take away their rights."

"Change and charters are an emotional issue, especially for the older generation," says Harris.

"Make sure the people understand the difference between a charter and a charter commission," says Lisbon's Bowie, who feels that one of the reasons for the defeat of the recent attempt to form a charter commission was the confusion in some people's minds as to what they were voting for. Some believed that by voting for the commission they were in fact voting to change their form of government, says Bowie, adding that while you are at it, educate the community about the whole process.

Survey and public meetings aside, Wales provides another approach to the charter process. "We took our time; we worked slowly, we worked informally at first," is how Richard Wells describes the charter process in Wales.

It started with an invitational meeting to all residents in town to attend a meeting to learn how the committees in town were organized and what they did in an effort to attract new blood.

"Our little ad hoc group of eleven or twelve people served a good purpose; it got people to thinking," says Wells.

"Out of that meeting arose the idea that maybe we ought to get it down on paper. We considered the idea of having each committee adopt bylaws. But we agreed we wanted the whole picture on one piece of paper and that meant a charter," recalls Wells.

The rest is history. Two and a half years later, Wales had its first charter.

Charters are not created in isolation; check your timing.

"When times are (economically) bad, people are not going to want to relinquish control," says Lisbon Selectman Ed Wall.

David Bowie agrees with Wall that the timing on this last attempt to form a charter commission in Lisbon was poor.

"I would not have chosen this year for the charter; we've come through a period of tremendous upheavals, people are sick of government; they don't want to hear anything about government," says Bowie, referring to the S & L crisis at the national level and the state budget crisis here in Maine.

While Wall argues that "town meeting is the highest form of democracy," Bowie puts a twist on the phrase and says "people perceive that town meeting is the highest form of control" and adds "this time 'round people did not want to change that."

Poor timing appears to have plagued Lisbon in all three of its attempts to adopt a charter. Bowie surmises it was the cause of the failed attempt to form a charter commission in 1986. "It was too soon after the last vote (in 1983)," says Bowie.

And of the 1983 vote, the only time there was an actual charter to vote upon, timing played a major role in the defeat of the proposed charter.

While that charter made provisions for a council form of government, it also included what Bowie calls a "popular measure," a provision that allowed voters to override the council's action. The provision called for a petition signed by 10 percent of the voters in the last gubernatorial election, followed by a special town meeting attended by no less than 500 voters.

Both Bowie and Harris believe that charter would have passed, had not the vote followed and been "complicated by another issue."

That issue was a \$1 million federally funded Community Development Block Grant. The town was required to hold a special meeting to accept the grant. But only 50 people showed up and it was rejected 20 to 18. "In the best interest of the town, I decided we should hold another special town meeting," says Bowie, who was on the board of selectmen at the time.

The second meeting attracted 250 residents, but the issue was no longer the acceptance of the grant, but whether the meeting should have been held. As Bowie recalls, the sentiment was: "Are you going to keep holding meetings until you get the answer you want?"

Not only did the grant go down to defeat but the issue generated enough anti-government

feeling to defeat the charter a few months later, recalls Bowie.

"I feel certain if the grant issue hadn't occurred, it (the charter) would have passed. As it was, it was defeated by 50 votes."

Timing was a key issue in the defeat of the proposed charter in Fairfield, according to former Fairfield Councilor William Croce.

Not only had the voters turned down an attempt by the council to do away with town meeting, the council had more recently refused to reappoint the town manager, who in turn was in the process of suing the town for damages.

One member of the council was reported (Central Maine Morning Sentinel 2/21/90) to have said as the council considered the establishment of a new charter commission that he didn't think the timing was right and argued that the town should wait another year. "Things need to calm down," he was quoted. Needless to say his advice went unheeded.

If the past upheavals weren't enough, following the establishment of the charter commission, the town council underwent its own major upheaval, including a recall of three of its members and a new election.

While the old council, which had voted not to reappoint the town manager, was in favor of changes to the charter, according to Croce, members of the new council, including Croce, were not.

In fact, just prior to the vote on the proposed charter, three members of the council adopted a resolution against the charter, saying the proposed charter did not serve the best interests of the town, charging that not enough input had been gathered from the town in preparing it.

More important, they disagreed with a major provision in the proposed charter which would limit the terms of the town manager and department heads.

Timing. The proper timing. It's crucial.

Make sure the charter commission knows what it is doing.

State statutes spell out very clearly the requirements for establishing charter commissions, holding public hearing on the proposed charter, even the number of residents who cast their vote on the proposed charter.

Lisbon's Bob Berube says you'd better be more than familiar with those requirements. "You have got to know what you are doing; if you falter, the opposition will have ammunition for shooting you down," he says.

Berube ought to know. He thinks that the fact that there was an insufficient number of signatures on a petition calling for a vote to establish the charter commission in Lisbon last fall was a factor in its defeat.

State law requires that the petition calling for the vote be signed by a number equal to 20 percent of the voters in the last gubernatorial election. In Lisbon, the town clerk told those circulating the petition they only needed 10 percent, which is the number required on all other types of petitions.

As Berube describes it, it was an honest mistake but there was insufficient time to collect the remaining signatures: they had set their goal to have the vote during the November election to attract a large number of voters.

So the board of selectmen, to help facilitate the process, agreed, although not unanimously, to put the question on the ballot.

The confusion fueled the opposition and caused opponents of the charter commission to charge that the lack of signatures indicated that the question did not have the full support of the community, says Berube.

MMA's Livengood draws attention to another requirement under the law: the requirement that an attorney certify that the proposed charter does not contain any provision prohibited by the federal or state constitution or the general laws.

His remark is a timely one, given Justice Broderick's recent ruling on the York charter's controversial budget committee provision claiming it usurps the authority of the school committee.

Strive for a balanced charter commission.

You don't want all the town radicals on the charter commission. But you don't want people without opinions, either. Invite the opposition to join you, advise the veterans.

Donnell Carroll, who chaired the Gray Charter Commission, says he worked hard to keep the politics out of the charter commission's work. He did so by making sure the process was an open one. While individuals may have joined the commission hoping to press their own personal narrow agenda, Carroll says it was important that all of those issues were laid on the table, up front, from the start.

"If they aren't expressed openly and argued, the subcurrents will drown you," says Carroll, adding that his goal was to reach 100 percent on every issue; that meant compromise. "But, then, I wanted to come out with a unanimous report," says Carroll. He did.

Lisbon's David Bowie admits that in every community there are a number of influential and conflicting viewpoints. "There will always be those opposed," says Bowie.

"If possible involve both sides," says Bowie, adding that it is hard to do because those who are opposed often won't join. "Try to channel their energies," says Bowie, who suggests you "acknowledge their opposition and invite them to share it as a member of the commission."

Bowie notes that by law the board of selectmen or council has the responsibility to appoint three people to the nine-member commission (the voters elect six).

"Use those three slots to balance out the commission," he advises.

Wales Charter Commission member Richard Wells concurs with Bowie, saying often times it is the old guard that does not want to make changes so it is very important to get the old guard involved and represented on the charter commission.

Give yourself enough time and money.

State statutes spell out clearly when the charter commission is to hold its first public hearing-within 30 days after its organization meeting-and when the draft should be presented to the public, and how many voters must participate in the referendum.

They also note that under specified conditions, the municipal officers may extend the time limit from 12 to 24 months. They also note that the municipality is required to credit a minimum of \$100 to the charter commission's account.

One of the charges the opponents to the charter in Fairfield raised against the charter was there had not been enough public input into the process; that if people did not attend the public hearings, the commission should have gone to the people; that a promised second public hearing on the final draft was not held.

Fairfield Charter Commission Chair Clifford Clark would be the first to agree that the commission needed more time to do its work and should have sought an extension. Under the law, within 12 months after it is elected, the commission must submit a final report.

Clark said they needed more time in order to hold a promised second public hearing on the final draft and should have sought an extension but didn't feel it would be granted by the voters who opposed the charter.

The commission was behind schedule from the start, says Clifford, due in part to the loss of three of its members: one member resigned, another dropped out for personal reasons and a third died. We had to replace three members, recalls Clifford, who was the only member who ran actively for a seat on the commission.

The fact that they only had \$500 also hampered their progress, says Clifford, forcing them to do a lot of their own legal research, slowing them down.

Fairfield Councilor William Croce, a strong critic of the charter commission, says the input process is definitely flawed in that the statutes require only one public hearing. Clifford agrees, saying "we should have brought it to a second public hearing."

Croce argues there was not enough effort to get local input. "If no one shows up at the hearings, then look for other ways to get input from the public," says Croce, who also acknowledges that "the best efforts could be for naught, because people don't get involved until the 11th hour."

Charter Resources

MMA Information Packet: Municipal Charters

This packet of materials available from the MMA's Legal Department contains a four-page summary on municipal charters that was prepared by MMA's legal staff in 1991. Among other things, the review includes the procedures that must be followed in adopting a charter and the role of the commission. The packet also contains a copy of the home rule statute, 30-A M.R.S.A. sections 2101-2109. It also contains two articles on charters appearing in the MAINE TOWNSMAN. "Town Manager Plan by Charter or Statute," MAINE TOWNSMAN April 1977; "Charter Revision or Charter Amendment," MAINE TOWNSMAN May 1982.

Maine Municipal Government: Charter Study Series

This series of five booklets on charters was prepared by the Bureau of Public Administration at the University of Maine in 1971. "Introduction to the Charter Drafting Process" and "Guidelines for Charter Drafting" are two of the five titles in the series.

May 13 2013 Public Hearing Info

Readfield

Information for May 13, 2013 Public Hearing on Ballot Question: Shall a Charter Commission be established for the Purpose of creating a New Municipal Charter?

What a Charter is:

- A legal constitution that spells out all the powers of the legislative, executive and administrative branches of municipal government.
- A quick reference guide on how Town government is organized for operation and shall work.
- There are three primary goals of a charter:
 - Describe the qualifications and duties of municipal officers.
 - Describe the municipal budget and the borrowing procedures.
 - Specify the policies and procedures governing citizen access to municipal government.

What a Charter can do:

- Distribute powers within the government.
- Establish efficiency and accountability in local government by creating structure.
- Include a conflict of interest provision and a recall provision.
- Set mode of elections.
- Set terms of office.
- Change the form of town government, including establishing a town council and doing away with Town Meeting.

Things to consider about a charter:

- Charter commission needs to be created for a charter creation and all major revisions.
- First step is permission to form a charter commission. (This is the referendum ballot question for 6-11-13.)
- An election must be held to form the charter commission. (If the referendum passes on 6-11-13, an election most likely would be in September 2013.)
- The charter commission drafts a charter that must go to Town Meeting to be voted in.
- All votes on charters at Town Meeting must have a quorum of at least 30% of the number of voters from the last gubernatorial election - not just a simple

May 13 2013 Public Hearing Info

majority of who turns out to vote. The total amount of voters must meet the noted threshold.

- Charters are time intensive documents to create.
- Leeway for changes is limited to annual reviews and vote at Town Meeting.
- Charter maintenance is a process that can be short for minor revisions or time intensive for major revisions. (Who decides whether changes would be minor or major, and if a full charter commission process would be required? Can "minor" charter changes be made using the same approach as an ordinance revision?) This is a real unknown to all-even MMA SR
- Legal review of all charter contents, amendments, additions, and deletions is necessary and has a financial cost.
- Public hearings must be held for all charter revisions (with advertising costs).
- Charters can only be voted on by secret referendum ballot (as opposed to a secret ballot during an on-floor Town Meeting).
- Charters, and all subsequent revisions, must be filed and recorded with the Secretary of State, the Law Library and the Town Clerk.
- Charter creation can cause unity or dissention within a community.
- Most charters are unclear as to who decides what to revise and when to revise.

Recommendations from many sources about a charter:

- Keep in mind the political history of your town.
- Charter should not be a political tool.
- Upheavals within a community make residents sick of hearing about the government.
- The vote on formation of a charter commission is a good indication of likely support for a possible charter.
- No two charters are alike. Be sure to look at the issues within your town for what is not working, don't go by other town's issues.
- Make sure that you prove to the people the democratic process is not being lost but revised.

The following lists under what authority Readfield currently operates.

All operations are under state statute, many by local policy or procedure, & a few by local ordinance.

Note: Policy and ordinance must follow State Statute but can be more detailed.

S = MRSa Title 30-A Part 2: Municipalities P = Policy or procedure O = Ordinance

May 13 2013 Public Hearing Info

Typical components of a town charter

- Incorporation and powers of the town **S**
 - Form of government **O-1967**
 - Powers of the town
 - Intergovernmental relations
 - Fiscal year **P**
- Nominations and elections - General **S**
 - Eligibility **P**
 - Nomination procedure
 - Election procedure and secret ballot
 - Compensation
 - Vacancy of office **P**
- Town Meeting **S**
 - Moderator
 - Annual meetings
 - Special meetings
 - Conduct of municipal elections and town meetings
 - When action of town meeting is required
- Enactment of Ordinances **S**
- Municipal officers - Select Board or Council **S**
 - Eligibility **P**
 - Composition and term of office **P**
 - Compensation
 - Induction, organizational meeting, and election of officers **P**
 - Quorum
 - General powers and duties **P**
 - Authority **P**
 - Meeting Procedure **P**
 - Non-interference **P**
 - Filling of vacancies **P**
 - Enumeration of responsibilities
- Town Manager **S**
 - Qualifications
 - Contract and salary
 - Powers and duties
 - Absence of the town manager
 - Resignation or removal
- Town Clerk **S**
 - Qualifications
 - Duties
 - Compensation
 - General
- Assessors' Agent **S**
 - Qualifications
 - Duties
 - Compensation
- Appointed Officers/Officials **S**
 - Animal Control Officer
 - Code Enforcement Officer
 - Election Officials
- Boards, Committees, Commissions, and Departments **S, P**
 - Board of Appeals
 - Board of Assessment
 - Appointments and vacancies **P**
 - Powers and duties
 - Budget Committee
 - Elections and vacancies **P**

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- Organizational meetings
 - Duties
 - o Planning Board
 - o Cemetery Maintenance
 - o Road Committee
 - o Fire Department
 - o Conservation Commission
- Budget preparation S, P
 - o Fiscal Year
 - o Preparation and submission of budget P
 - o Budget review
 - o Transfer of appropriations
 - o Lapse of funds
- Tax administration S, P
- Independent annual audit S, P
- Initiative and referendum S, P
 - o General authority
 - o Process and petition
 - o Post filing procedure
 - o Results of vote
- General provisions S
 - o Oath of office P
 - o Bonding of officials
 - o Conflict of interest P, O-pending 2013
 - o Recall of elected officials O-pending 2013
 - o Forfeiture of office
 - o Holding other office O-pending 2013
 - o Amendment of charter
 - o Amendment of state statutes
 - o Transition provisions of charter enactment: administrative officers, existing contracts, ordinances
 - o State and municipal laws
 - o Severability
 - o Repealing clause
 - o Ratification
 - o Effective date

Other options available:

1. Creation of ordinances versus policies
 - a) Costs less than a charter, would still need legal review
 - b) Addresses what the public is looking for
 - c) Has to be voted upon at Town Meeting
 - d) Ad hoc committee could be set up to propose ordinance
 - e) Still gives the flexibility needed for the Town Officials to carry out duties
2. Administrative Ordinance
 - a) How our Town currently operates can be voted upon to create an Administrative Ordinance
 - b) Only can be changed at Town Meeting
 - c) Costs less than a charter, would still need legal review

Maine Revised Statutes

Title 30-A: MUNICIPALITIES AND COUNTIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Part 2: MUNICIPALITIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2101. Purpose

The purpose of this chapter is to implement the home rule powers granted to municipalities by the Constitution of Maine, Article VIII, Part Second. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

1987, c. 737, SSA2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§8,10 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.

If you need legal advice, please consult a qualified attorney.

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Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2102. Charter revisions, adoptions, procedure

1. Municipal officers. The municipal officers may determine that the revision of the municipal charter be considered or that adoption of a new municipal charter be considered and, by order, provide for the establishment of a charter commission to carry out that purpose as provided in this chapter.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Petition by voters. On the written petition of a number of voters equal to at least 20% of the number of votes cast in the municipality at the last gubernatorial election, but in no case less than 10, the municipal officers, by order, shall provide for the establishment of a charter commission for the revision of the municipal charter or the preparation of a new municipal charter as provided in this chapter.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Petition procedure. The following procedure shall be used in the alternative method set out in subsection 2.

A. Any 5 voters of the municipality may file an affidavit with the municipal clerk stating:

- (1) That the 5 voters will constitute the petitioners' committee;
- (2) The names and addresses of the 5 voters;
- (3) The address to which all notices to the committee are to be sent; and

(4) That the 5 voters will circulate the petition and file it in proper form.

The petitioners' committee may designate additional voters of the municipality, who are not members of the committee, to circulate the petition.

Promptly after the affidavit is filed, the clerk shall issue petition blanks to the committee. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The municipal clerk shall prepare the petition forms at the municipality's expense. The petition forms shall be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary.

(1) Petition forms shall carry the following legend in bold lettering at the top of the face of each form.

"Municipality of"

"Each of the undersigned voters respectfully requests the municipal officers to establish a Charter Commission for the purpose of revising the Municipal Charter or preparing a New Municipal Charter."

Each signature to a petition must be in ink or other indelible instrument and must be followed by the residence of the voter with street and number, if any. No petition may contain any party or political designation.

(2) The clerk shall note the date of each petition form issued. All petitions must be filed within 120 days of the date of issue or they are void.

(3) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating:

(a) That the circulator personally circulated the form;

(b) The number of signatures on the form;

(c) That all the signatures were signed in the circulator's presence;

(d) That the circulator believes them to be genuine signatures of the persons whose names they purport to be;

(e) That each signer has signed no more than one petition; and

(f) That each signer had an opportunity to read the petition before signing.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note the date of filing on the forms. [1987, c. 737, Pt. A, §2

(NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Procedure after filing. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars which render it defective. The clerk shall promptly send a copy of the certificate to the petitioners' committee by mail and shall file a copy with the municipal officers.

A. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of the clerk's certificate.

Within 10 days after this notice of intention is filed, the committee may file a supplementary petition to correct the deficiencies in the original. This supplementary petition, in form and content, must comply with the requirements for an original petition under subsection 3. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

B. Within 5 days after a supplementary petition is filed, the clerk shall complete and file a certificate as to its sufficiency in the manner provided for an original petition. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

C. When an original or supplementary petition has been certified insufficient, the committee, within 2 days after receiving the copy of the clerk's certificate, may file a request with the municipal officers for review.

The municipal officers shall inspect the petitions in substantially the same form and manner as a recount under section 2531-B and shall make due certificate of that inspection. The municipal officers shall file a copy of that certificate with the municipal clerk and mail a copy to the committee. The certificate of the municipal officers is a final determination of the sufficiency of the petitions. [2011, c. 255, §1 (AMD) .]

D. Any petition finally determined to be insufficient is void. The clerk shall stamp the petition void and seal and retain it in the manner required for secret ballots. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

[2011, c. 255, §1 (AMD) .]

5. Election procedure. Within 30 days after the adoption of an order under subsection 1 or the receipt of a certificate or final determination of sufficiency under subsection 4, the municipal officers shall by order submit the question for the establishment of a charter commission to the voters at the next regular or special municipal election held at least 90 days

after this order.

A. The question to be submitted to the voters shall be in substance as follows:

"Shall a Charter Commission be established for the purpose of revising the Municipal Charter or establishing a New Municipal Charter?"

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, Pt. A, §2 (NEW). 1987, c. 737, Pt. C, §106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, Pt. C, §§8, 10 (AMD). 1993, c. 608, §4 (AMD). 2011, c. 255, §1 (AMD).

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Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2103. Charter commission, membership, procedure

1. Membership. The charter commission shall consist of several voters in the municipality, elected under paragraph A, and 3 members appointed by the municipal officers under paragraph B.

A. Voter members must be elected by one of the following methods:

- (1) Six voter members are elected in the same manner as the municipal officers, except that they must be elected at-large and without party designations;
- (2) One voter member is elected from each voting district or ward in the same manner as municipal officers, except that the voter member must be elected without party designation; or
- (3) Voter members are elected both at-large and by district or ward, as long as the number of voter members is the same as the number of municipal officers on the board or council of that municipality and the voter members are elected in the same manner as the municipal officers, except that they must be elected without party designation.

Election of voter members may be held either at the same municipal election as the referendum for the charter commission or at the next scheduled regular or special municipal or state election. The names of the candidates on the ballot must be arranged alphabetically by last name. If the elections are held at the same time, the names of the candidates must appear immediately below the question relating to the charter commission. [2009, c. 52, §1 (AMD); 2009, c. 52, §2 (AFF).]

B. Appointive members need not be residents of the municipality, but only one may be a municipal officer. The municipal officers shall make the appointments in accordance with municipal custom or bylaws within 30 days after the election approving the establishment of the charter commission. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[2009, c. 52, §1 (AMD); 2009, c. 52, §2 (AFF) .]

2. Organization. Immediately after receiving notice of the appointment of the members by the municipal officers, the municipal clerk shall notify the appointed and elected members of the charter commission of the date, time and place of the charter commission's organizational meeting. The clerk shall set the date, time and place of the meeting and give at least 7 days' notice of the meeting.

The charter commission shall organize by electing from its members a chairman, vice-chairman and a secretary and shall file notice of these elections with the municipal clerk. Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the municipality, except that a vacancy among appointive members shall be promptly filled by the municipal officers. Members shall serve without compensation, but shall be reimbursed from the commission's account for expenses lawfully incurred by them in the performance of their duties.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Regulations, staff. The charter commission may adopt regulations governing the conduct of its meetings and proceedings and may employ any necessary legal, research, clerical or other employees and consultants within the limits of its budget.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Funding. A municipality shall provide its charter commission, free of charge, with suitable office space and with reasonable access to facilities for holding public hearings, may contribute clerical and other assistance to the commission and shall permit it to consult with and obtain advice and information from municipal officers, officials and employees during ordinary working hours. Within 20 days after the members of a charter commission are elected and appointed, the municipal officers shall credit \$100 to the charter commission account. A municipality, from time to time, may appropriate additional funds to the charter commission account. These funds may be raised by taxation, borrowed or transferred from surplus.

A. In addition to funds made available by a municipality, the charter commission account may receive funds from any other source, public or private, except that no contribution of more than \$5 may be accepted from any source other than the municipality, unless the name and address of the person or agency making the contribution and the amount of the

contribution are disclosed in writing filed with the clerk. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Prior to its termination, the charter commission shall file with the clerk a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the municipality's surplus account. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

5. Hearings, reports, time limits. The following requirements regarding hearings, reports and time limits apply to a charter commission.

A. Within 30 days after its organizational meeting, the charter commission shall hold a public meeting to receive information, views, comments and other material relating to its functions. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The charter commission shall hold its public hearings within the municipality at the times and places set by the commission. At least 10 days before a hearing, the charter commission shall publish the date, time and place of the hearing in a notice in a newspaper having general circulation in the municipality. Hearings may be adjourned from time to time without further published notice. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Within 9 months after its election, the charter commission shall:

(1) Prepare a preliminary report including the text of the charter or charter revision which the commission intends to submit to the voters and any explanatory information the commission considers desirable;

(2) Have the report printed and circulated throughout the municipality; and

(3) Provide sufficient copies of the preliminary report to the municipal clerk to permit its distribution to each voter requesting a copy. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

D. Within 12 months after its election, the charter commission shall submit its final report to the municipal officers. This report must include:

(1) The full text and an explanation of the proposed new charter or charter revision;

(2) Any comments that the commission considers desirable;

(3) An indication of the major differences between the current and proposed

charters; and

(4) A written opinion by an attorney admitted to the bar of this State that the proposed charter or charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.

Minority reports if filed may not exceed 1,000 words. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. The municipal officers may extend the time limits for the preparation and submission of preliminary and final reports of the charter commission for up to 24 months after the election of the commission if the extension is necessary to:

(1) Properly complete the reports;

(2) Have them printed or circulated; or

(3) Obtain the written opinion of an attorney. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

6. Election. When the final report is filed, the municipal officers shall order the proposed new charter or charter revision to be submitted to the voters at the next regular or special municipal election held at least 35 days after the final report is filed.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

7. Charter modification summaries. When a proposed charter revision is submitted to the voters in separate questions as charter modifications under section 2105, subsection 1, paragraph A, and the municipal officers, with the advice of an attorney, determine that it is not practical to print the proposed charter modification on the ballot and that a summary would not misrepresent the subject matter of the proposed modification, a summary of the modification may be substituted for the text of the proposed modification in the same manner as a summary is substituted for a proposed amendment under section 2104, subsection 6.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

8. Termination. Except as provided in paragraph A, the charter commission shall continue in existence for 30 days after submitting its final report to the municipal officers for the purpose of winding up its affairs.

A. If judicial review is sought under section 2108, the charter commission shall continue in existence until that review and any appeals are finally completed for the purpose of intervening in those proceedings. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt.

C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §2A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §2C8,10 (AMD). 2007, c. 495, §1 (AMD). 2009, c. 52, §1 (AMD). 2009, c. 52, §2 (AFF).

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Part 2: MUNICIPALITIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2104. Charter amendments; procedure

1. Municipal officers. The municipal officers may determine that amendments to the municipal charter should be considered and, by order, provide for notice and hearing on them in the same manner as provided in subsection 5, paragraph A. Within 7 days after the hearing, the municipal officers may order the proposed amendment to be placed on a ballot at the next regular municipal election held at least 30 days after the order is passed; or they may order a special election to be held at least 30 days from the date of the order for the purpose of voting on the proposed amendments.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Alternative statements of a single amendment are prohibited. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Petition by voters. On the written petition of a number of voters equal to at least 20% of the number of votes cast in a municipality at the last gubernatorial election, but in no case less than 10, the municipal officers, by order, shall provide that proposed amendments to the municipal charter be placed on a ballot in accordance with paragraphs A and B.

A. Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Alternative statements of a single amendment are prohibited. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Petition procedure. The petition forms shall carry the following legend in bold lettering at the top of the face of each form.

"Municipality of"

"Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below."

No more than one subject may be included in a petition.

In all other respects, the form, content and procedures governing amendment petitions shall be the same as provided for charter revision and adoption petitions under section 2102, including procedures relating to filing, sufficiency and amendments.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Amendment constituting revision. At the request of the petitioners' committee, the petition form shall also contain the following language:

"Each of the undersigned voters further requests that if the municipal officers determine that the amendment set out below would, if adopted, constitute a revision of the charter, then this petition shall be treated as a request for a charter commission."

Upon receipt of a petition containing this language, the municipal officers, if they determine with the advice of an attorney that the proposed amendment would constitute a revision of the charter, shall treat the petition as a request for a charter commission and follow the procedures applicable to such a request.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

5. Action on petition. The following procedures shall be followed upon receipt of a petition certified to be sufficient.

A. Within 10 days after a petition is determined to be sufficient, the municipal officers, by order, shall provide for a public hearing on the proposed amendment. At least 7 days before the hearing, they shall publish a notice of the hearing in a newspaper having general circulation in the municipality. The notice must contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Within 7 days after the public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment does not contain any provision prohibited by the general laws, the United States Constitution or the Constitution of Maine. In the case of a committee report, a copy shall also be filed with the municipal officers. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. On all petitions filed more than 120 days before the end of the current municipal year, the municipal officers shall order the proposed amendment to be submitted to the voters at the next regular or special municipal election held within that year after the final report is filed. If no such election will be held before the end of the current municipal year, the municipal officers shall order a special election to be held before the end of the current municipal year for the purpose of voting on the proposed amendment. Unrelated charter amendments shall be submitted to the voters as separate questions. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

6. Summary of amendment. When the municipal officers determine that it is not practical to print the proposed amendment on the ballot and that a summary would not misrepresent the subject matter of the proposed amendment, the municipal officers shall include in their order a summary of the proposed amendment, prepared subject to the requirements of section 2105, subsection 3, paragraph C, and instruction to the clerk to include the summary on the ballot instead of the text of the proposed amendment.

[1991, c. 622, Pt. X, §10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1991, c. 622, §X10 (AMD).

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Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2105. Submission to voters

The method of voting at municipal elections, when a question relating to a charter adoption, a charter revision, a charter modification or a charter amendment is involved, shall be in the manner prescribed for municipal elections under sections 2528 to 2532, even if the municipality has not accepted the provisions of section 2528. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Charter revision or adoption. Except as provided in paragraph A, in the case of a charter revision or a charter adoption, the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the (charter revision) (new charter) recommended by the charter commission?"

A. If the charter commission, in its final report under section 2103, subsection 5, recommends that the present charter continue in force with only minor modifications, those modifications may be submitted to the voters in as many separate questions as the commission finds practicable. The determination to submit the charter revision in separate questions under this paragraph and the number and content of these questions must be made by a majority of the charter commission.

(1) If a charter commission decides to submit the charter revision in separate questions under this paragraph, each question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter modification recommended by the charter commission and reprinted (summarized) below?"

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Charter amendment. In the case of a charter amendment the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?"

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Voter information. Reports shall be made available and summaries prepared and made available as follows.

A. In the case of a charter revision or charter adoption, at least 2 weeks before the election, the municipal officers shall:

- (1) Have the final report of the charter commission printed;
- (2) Make copies of the report available to the voters in the clerk's office; and
- (3) Post the report in the same manner that proposed ordinances are posted. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. In the case of a charter amendment, at least 2 weeks before the election, the municipal officers shall:

- (1) Have the proposed amendment and any summary of the amendment prepared under this section printed;
- (2) Make copies available to the voters in the clerk's office; and
- (3) Post the amendment and any summary of that amendment in the same manner that proposed ordinances are posted. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Any summary must fairly describe the content of the proposed amendment and may not contain information designed to promote or oppose the amendment. [1991, c. 622, Pt. X, §11 (AMD) .]

[1991, c. 622, Pt. X, §11 (AMD) .]

4. Effective date. If a majority of the ballots cast on any question under subsection 1 or 2 favor acceptance, the new charter, charter revision, charter modification or charter amendment becomes effective as provided in this subsection, provided the total number of

votes cast for and against the question equals or exceeds 30% of the total votes cast in the municipality at the last gubernatorial election.

A. Except as provided in subparagraph (1), new charters, charter revisions or charter modifications adopted by the voters take effect on the first day of the next succeeding municipal year.

(1) New charters, charter revisions or charter modifications take effect immediately for the purpose of conducting any elections required by the new provisions. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. Charter amendments adopted by the voters take effect on the date determined by the municipal officers, but not later than the first day of the next municipal year. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1991, c. 622, §X11 (AMD).

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Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2106. Recording

Within 3 days after the results of the election have been declared, the municipal clerk shall prepare and sign 3 identical certificates setting forth any charter that has been adopted or revised and any charter modification or amendment approved. The clerk shall send one certificate to each of the following: [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Secretary of State. The office of the Secretary of State, to be recorded;

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Law library. The Law and Legislative Reference Library; and

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Clerk's office. The office of the municipal clerk.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§8,10 (AMD).

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Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2107. Effect of private and special laws

Private and special laws applying to a municipality remain in effect until repealed or amended by a charter revision, adoption, modification or amendment under this chapter. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

1987, c. 737, §§2, C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§8, 10 (AMD).

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Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2108. Judicial review

1. Petition. The Superior Court, upon petition of 10 voters of the municipality or on petition of the Attorney General, may enforce this chapter. The charter commission may intervene as a party in any such proceeding.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

2. Declaratory judgment. A petition for declaratory relief under Title 14, chapter 707, may be brought on behalf of the public by the Attorney General or, by leave of the court, by 10 voters of the municipality. The charter commission shall be served with notice of the petition for declaratory judgment.

A. If 10 voters petition for declaratory relief, they shall serve the Attorney General and the charter commission with notice of the preliminary petition for leave. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

B. The Attorney General or the charter commission may intervene as a party at any stage of the proceedings. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

C. The petitioners are liable for costs. However, the court has discretion to award costs and reasonable attorney fees to the petitioners. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD);

1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

3. Judicial review. Any 10 voters of the municipality, by petition, may obtain judicial review to determine the validity of the procedures under which a charter was adopted, revised, modified or amended. The petition must be brought within 30 days after the election at which the charter, revision, modification or amendment is approved. If no such petition is filed within this period, compliance with all the procedures required by this chapter and the validity of the manner in which the charter adoption, revision, modification or amendment was approved is conclusively presumed. No charter adoption, revision, modification or amendment may be found invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected the adoption, revision, modification or amendment.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

4. Resubmission upon judicial invalidation for procedural error. If the court finds that the procedures under which any charter was adopted, revised, modified or amended are invalid, the Superior Court, on its own motion or the motion of any party, may order the resubmission of the charter adoption, revision, modification or amendment to the voters. This order shall require only the minimum procedures on resubmission to the voters that are necessary to cure the material and substantial errors or omissions. The Superior Court may also recommend or order other curative procedures to provide for valid charter adoption, revision, modification or amendment.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY

1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD).

**The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.**

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Maine Revised Statutes

Title 30-A: MUNICIPALITIES AND COUNTIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Part 2: MUNICIPALITIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Subpart 2: ORGANIZATION AND INTERLOCAL COOPERATION HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

Chapter 111: HOME RULE HEADING: PL 1987, C. 737, PT. A, §2 (NEW)

§2109. Liberal construction

This chapter, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to accomplish its purposes. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

SECTION HISTORY

1987, c. 737, §2 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§8, 10 (AMD).

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