

# THE MUNICIPAL CHARTER PROCESS FOR TOWNS

*By Maura Carroll, Esq., General Counsel, NHMA/LGC  
Judy A. Silva, Esq., Government Affairs Counsel, NHMA/LGC*

Part 1, Article 39 of the New Hampshire Constitution prohibits the state legislature from enacting any law changing the charter or form of government of a city or town without the approval of local voters. This same constitutional provision also allows the legislature to delegate to cities and towns the authority to choose their own forms of government, including the authority to adopt and amend charters. New Hampshire Revised Statutes Annotated Chapters 49-B, 49-C, and 49-D, outline the process by which municipalities may choose their form of government and how they may structure local operations with a charter.

Charters offer voters much flexibility in the configuration of their town government and provide for many variations in the balance of power between the citizens and the government. The charter process provides an opportunity to tailor the organization of local government to the specific local circumstances. A charter also safeguards the municipality from many legislative changes which may be made to local government statutes.

## **I. Adoption of a Charter**

RSA Chapter 49-B sets forth the scope of authority to adopt and change charters, provides definitions necessary to determine the parameters of the process, and identifies which local officials have the authority to act in a given situation.

The process for the adoption of an initial charter is prescribed in RSA 49-B:3. The municipal officers, defined in RSA 49-B:2, IV (f) as "the mayor and board of aldermen, mayor and council, and city council in a city, and board of selectmen and town council in a town," may decide that adoption of a charter is advised or necessary and order the question of whether to create a charter commission to be submitted to the voters.

Alternatively, voters may petition municipal officers to establish a municipal charter. The petition process can work in one of two ways: either with the submission of a written petition by voters representing at least 20% of the number of votes cast at the last municipal election, RSA 49-B:3, 11, or the formation of a petitioners' committee by any 5 voters in the municipality. The petitioners' committee files an affidavit with the clerk and then members circulate petition forms requesting the establishment of a charter commission. RSA 49-B:3, III. All petition forms must be filed with the clerk at the same time and are null and void 120 days after they are issued. The statute specifies that it is then the duty of the town clerk to verify the petition and the ability of the committee to file a supplemental petition, should there be an insufficiency.

Within 30 days of the decision by the municipal officers or the final determination that a petition is sufficient, the municipal officers must order that the question of the establishment of a charter commission be submitted to the voters at the next regular municipal election. If the municipality has biennial elections, the question shall be submitted to voters at the next state biennial election if such election is to be held not less than 60, nor more than 180 days thereafter. Otherwise, the question regarding the charter commission shall be submitted at a special election held not less than 60 days nor more than 90 days after the decision or petition. The recommended question to be posed to the voters is stated in the statute as follows: shall a charter commission be established for the purpose of establishing a new municipal charter? These provisions are all contained in RSA 49-B:3, V.

The vote on the creation of a charter commission is separate from the vote on charter commission members except in official ballot charter communities. See below. RSA 49-B:4 is quite detailed about the election of a charter commission, which consists of nine members. Within 5 days of the deadline for a recount of the vote to create a charter commission, municipal officers meet to order the special election for charter commission members. This special election must be held on a Tuesday not less than 56 nor more than 63 days after the meeting of municipal officials. Charter commission members are elected in the same way that municipal officers are elected, except that they must be elected at large on a non-partisan basis and names must be listed on the ballot in alphabetical order. Any voter from the municipality is eligible to serve. RSA 49-B:4, I.

**Note:** Towns considering charters for official ballot voting must follow several different statutory provisions. For example, the question of whether to establish a charter commission and the election of charter commission members must be placed on the ballot for the same election, not two separate elections. The statute also specifically provides that no other issues shall be addressed by a charter commission established for the purpose of considering an official ballot question. In fact, the statutorily recommended question is: shall a charter commission be established for the sole purpose of establishing official ballot voting *under the current form of government?* (Italics added.) RSA 49-B:3, VI.

The town clerk sets the date of the first meeting and notifies those elected to the commission; the commission elects its officers at that meeting. Vacancies in membership are filled by vote of remaining commission members. RSA 49-B:4, II. The charter commission may adopt rules governing its meetings and proceedings and may hire consultants and employees in accordance with the commission's budget as provided by the legislative body or as provided by public or private donations. RSA 49-B:4, III. Paragraph V of this statute provides that the commission must hold all of its public hearings within the municipality and must provide at least 7 days prior notice of such hearings.

Within 14 days of its organizational meeting, the charter commission must hold a public meeting to receive information, views, comments and other material pertinent to its functions. Within 180 days after its election, the commission must prepare a

preliminary report including the text of proposals it intends to submit to the voters along with an explanation of each proposal. The report must be printed, circulated, and available to any voter requesting a copy.

Within 225 days after its election, the commission shall submit its final report to the municipal officers, including the full text and explanation of the proposed new charter and any comments the commission desires to make. The report must be accompanied by a written legal opinion stating that the proposal is not in conflict with New Hampshire's laws or constitution. Minority reports may be filed, but may not exceed 1000 words. RSA 49-B:4, V.

After the final report is filed, the municipal officers shall order the proposal to be submitted to the voters at the next regular municipal election or, if the municipality has biennial elections, at the next state biennial election held at least 45 days after the report is filed. RSA 49-B:4, VI. The charter commission continues for 60 days after submission of its final report to conclude its business. RSA 49-B:4, VII.

## **II. Revision or Amendment?**

The charter statute definitions become particularly important in determining the process to be used to change a charter. For example, if a municipality wishes to *revise* its charter, the municipality must adopt a charter commission whose members will propose changes. *Amending* the charter does not require a charter commission process, except in towns which have adopted the official ballot referendum form of government - see RSA 49-B:3, VI.

### **A. Revisions**

The process for making revisions to a charter is identical to the process of adopting an initial charter, and in fact, the procedures are set forth in the same section of the statute. Because revisions involve multiple changes in the basic form of government which can be proposed by several enactments or repeals, a charter commission must be established. The question of creating a charter commission can be submitted to the voters either by vote of the municipal officers or by petition, just as with the adoption of an initial charter. See RSA 49-B:3 and the section above for further explanation.

### **B. Amendments**

Proposals to amend a charter do not require a charter commission and are procedurally less complicated. Municipal officers may determine that amendments are necessary or voters may, by written petition, propose amendments to be placed on the ballot. The petition must include signatures equal in number to at least 20% of the votes cast at the last regular municipal election, but in no case less than 10 voters. Whether proposed by the municipal officers or by petition, each amendment must be limited to a

single subject, although more than one section of the charter may be amended if it is germane to the subject matter. RSA 49-B:5, I and II.

A public hearing must be held on all proposed amendments. If it is a petitioned amendment, the municipal officers, or committee appointed by them, must file a report with the clerk containing the final language of the proposed amendment as well as a written opinion from an attorney stating that the proposal is not in conflict with the constitution or general laws. RSA 49-B:5. IV.

If the amendment is offered by the municipal officers, they *may* order that it be placed on the ballot at the next regular municipal election or, in municipalities with biennial elections, at the next regular state biennial election if that election is held not less than 60 days after the order is passed, or the officers may order a special election to be held not less than 60 days from the date of the order. RSA 49-B:5, I.

If the amendment is petitioned, the municipal officers *shall* order that it be placed on the ballot at the next regular municipal election or at the next regular state biennial election if such election is held not less than 60 days nor more than 180 days thereafter. Otherwise, the municipal officers shall order a special election to be held not less than 60 nor more than 90 days from the date of the order. RSA 49-B:5, IV(c).

### **III. Charter Voting**

Within 10 days of the filing of the preliminary report, the town clerk must file a certified copy with the secretary of state, the attorney general, and the commissioner of DRA, each of whom must review the report within 14 days to insure consistency with state laws. If any of these officials do not approve of a proposal, it shall not go on the ballot. Objections must be specified in writing within the time allowed or the proposal is deemed approved. The governing body may appeal an objection to superior court. RSA 49-B:5-a.

Voting on charter changes is done in the same manner as for all municipal elections. Adoption and revision questions must include a summary of the current form of government and how the proposal will change it. The final report of the charter commission or the proposed amendment and a summary must be made available to voters and posted at least 2 weeks prior to the election. RSA 49-B:6.

Approval is by majority vote and the effective date for new charters, revisions, or charter revocations is immediate for the purpose of conducting any necessary elections, but otherwise on the first day of the next succeeding municipal year or as specified in the transition provisions of the charter. RSA 49-B:6. Charter amendments are effective on the first day of the next succeeding municipal year or on a date determined by the municipal officers, whichever date occurs first.

Within 3 days of the declaration of election results, the clerk shall prepare certificates stating what has been approved, to be filed in both the clerk's and secretary of

state's offices. RSA 49-B:7. Although charter municipalities may continue to enact ordinances and bylaws to exercise any power or function granted to municipalities by the constitution or general law, they may only make changes in the composition, mode of election, or terms of the legislative body, the mayor, or the manager through a charter change, not by ordinance or bylaw. RSA 49-B:8. Any special laws which apply to a specific municipality continue in effect unless repealed by the legislature or by a change to the charter. RSA 49-B:9.

Voters or the Attorney General may petition the superior court for declaratory relief to enforce the provisions of the chapter or to determine the validity of the procedures by which a charter was adopted or changed. RSA 49-B:10. The statute includes a severability provision, to assure that if portions of the statute or the charter are found to be invalid, the whole statute or charter is not considered invalid. RSA 49-B:13.

Any town, through the petition procedure established in RSA 49-B, may repeal its charter and return to its prior form of government without establishing a charter commission and the vote shall be the same as for a charter amendment under RSA 49B:5. RSA 49-B:12.

#### **IV. Specific Provisions for Charters in Towns**

RSA Chapter 49-D governs town charters, specifically outlining the forms of town government that may be adopted pursuant to the processes specified in RSA 49-B. Although it may look confusing at first, it is important to keep in mind that each town must have a governing body and a legislative body, as defined in RSA 21:47 and :48. A town may adopt a town council and the town council may serve as both the governing body and the legislative body. Or, a town may adopt a town council and choose to have an alternate legislative body for specific issues. The key is that with a charter, towns can be flexible about their choices for both a governing body and a legislative body.

There is no longer a need for the creation of special charters by the legislature in order to establish one of these forms of government.

##### **A. Town Council - Town Manager**

RSA 49-D:2 allows a town to abolish open town meeting and either place all legislative authority in the town council or, alternatively, to maintain a budgetary town meeting for the limited purpose of authorizing appropriations for the town. A town council - town manager form of government may also allow the town's voters to approve bond issues and retain authority to vote on land use ordinances by referendum vote.

A charter that establishes the town council - town manager form of government must establish a legislative body pursuant to RSA 49-D:3 (the only option not available is the representative town meeting); provide for the election of a chair of the town council either directly by the voters or by the members of the town council, and determine the

powers, duties, term of office and other matters relative to the chair of the council; and provide for the council's appointment of a chief administrative officer who shall be chosen on the same basis, possess the same qualifications, enjoy similar job security, be vested with the same authority, and charged with the same responsibility as town managers described in RSA Chapter 37.

## **B. Optional Forms of Legislative Body**

### **1. Town Council (RSA 49-:3,I)**

Town council is an elected body serving as both the legislative and governing body of the town. If a town's charter provides for this form of government without any other form of legislative body, the council shall have all the powers and duties of selectmen, city councils and boards of aldermen that are conferred by statute or the constitution. The council also has the authority to address all matters that are required to be addressed at an annual or special town meeting except where the statute or the charter require that certain matters be placed on the official ballot. All procedural requirements which apply to a city also apply to the actions of the town council.

A town council may be composed of up to 15 members, with the requirement that an odd number be chosen unless the chair's vote is for the purpose of breaking a tie. Councilors' terms may be coterminous or staggered. Using the provisions of RSA 49-C as a guide, the charter must specify whether councilors will have at-large or district representation or a combination of those; the process for filling vacancies; the powers of nomination, appointment, and confirmation; the requirements for a quorum and attendance by councilors; any residency or eligibility requirements of up to a year in the town or the district and continued residency requirements during the term of office; the designation of a fiscal year and the preparation, presentation, public hearing and adoption of the budget; the procedures for issuing bonds and notes; an annual municipal election date in accordance with RSA 669:1; bonding of town officials and employees not required by law to be bonded; and requirements for periodic independent financial audits. In addition, other matters of local concern to the town may be included in the charter, including but not limited to conflict of interest provisions, citizen initiatives, and referenda as provided in RSA 49-C and the adoption and periodic review of an administrative code, merit personnel system, purchasing system, and town investment policy. **Note:** The statute also refers to recall provisions and the authority to include them in the charter as provided in RSA 49-C, but RSA 49-C no longer authorizes recall provisions in the charter.

### **2. Official Ballot Town Council (RSA 49-D:3, I-a)**

This variation of the town council form provides for voting by official ballot on some or all matters that the general law requires be addressed at annual or special town meeting. The town council has authority only on those matters not voted on by official ballot. When an official ballot town council is included in a charter, the provisions of

RSA 49-D:3, 1 shall apply in all respects except relative to those matters voted on by official ballot.

The charter must also specify with precision the budgetary items to be included on the official ballot, a process for finalizing the budget, the process for public hearings, debate, discussion and amendment of questions to be placed on the official ballot, the procedures for transferring funds as may be necessary during the year, and the applicability of the official ballot procedure to special elections. Official ballot voting shall be done in accordance with election provisions contained in RSA 669:19-29, RSA 670:5-7, and RSA 671:20-30. Notwithstanding the provisions of RSA 40:4-e and RSA 39:3-d, non-budgetary items may be placed on the official ballot, as well.

### **3. Budgetary Town Meeting (RSA 49-D:3, 11)**

This form of government is considered to be a variation of the open town meeting, but vests the town meeting with the limited authority to vote on the annual town operating budget as presented by the governing body. All other legislative authority rests with the town council. General provisions of the law relative to town meeting shall apply to budgetary town meeting as they relate to the appropriation of funds, including bond approvals. The charter must also specify procedures for the transfer of funds during the year.

### **4. Official Ballot Town Meeting (RSA 49-D:3, II-a)**

As another variation of open town meeting, this form of government provides for voting by official ballot on some or all warrant articles, including part or all of the operating budget. The open town meeting has only the authority to vote on matters not voted on by official ballot. As with budgetary town meeting, general provisions of the law relative to town meeting shall apply to the official ballot town meeting and the open town meeting. The charter shall also specify with precision the budgetary items to be included on the official ballot, a process for finalizing the budget, the process for public hearings, debate, discussion and amendment of questions to be placed on the official ballot, the procedures for transferring funds as may be necessary during the year, and the applicability of the official ballot procedure to special elections. Notwithstanding the provisions of RSA 40:4-e and RSA 39:3-d, non-budgetary items may be placed on the official ballot, as well.

### **5. Representative Town Meeting (RSA 49-D:3, III)**

Representative town meeting is also considered to be a variation of the open town meeting, but with legislative authority vested in a group of individuals elected to represent various districts within the town. This is not an option with a town council - town manager form of government; the town must have a board of selectmen. If a town's charter provides for this form of government, all the powers and duties of the town meeting conferred by statute or the constitution are assigned to the representative town meeting. The representative town meeting also has the authority to address all matters

that are required to be addressed at an annual or special town meeting except where statute or the charter require that those matters be placed on the official ballot. All procedural requirements that apply to a town meeting also apply to the actions of the representative town meeting.

The charter must specify the manner of district representation; the process for filling vacancies; the powers of nomination, appointment, and confirmation; the requirements for a quorum and attendance by representatives; any residency or eligibility requirements of up to a year in the town or the district and continued residency requirements during the term of office; the designation of a fiscal year and the preparation, presentation, public hearing and adoption of the budget; an annual municipal election date in accordance with RSA 669:1; the bonding of town officials and employees not required by law to be bonded; and the requirements for periodic independent financial audits.

The board of selectmen, town clerk, and chair of the town budget committee shall be members at large, and shall have the same rights, privileges, and duties with respect to representative town meeting as the elected members. In addition, the charter may provide for referenda voting on certain issues at special town meetings called for the sole purpose of deciding those issues and include all registered voters of the town-at-large as eligible voters for the referendum.

## **V. Miscellaneous**

### **A. Non-Interference By Elected Body**

RSA 49-D:4 provides that members of the town council or members of representative town meeting must always act as a body and not individually seek to influence acts of the chief administrative officer or other officials in the town or in any way to interfere with the performance of the duties of these officials. Subject to the procedures set out in the charter, forfeiture of office is the penalty for violating the non-interference requirement.

### **B. Transition Provisions**

RSA 49-D:5 allows the charter to contain transition provisions so that changing to a new form of government can be done timely and efficiently. The charter may contain sections dealing with special elections, phasing in of any aspect of the new form of government, spending authority during the transition, and the integration of any remaining terms of office of existing municipal officials.

## **VI. Conclusion**

Charters offer great flexibility to municipal voters in establishing a governmental system which will serve the town residents in the most appropriate way. Although the statutes are detailed and specific, they are navigable. When the standard statutory options no longer serve the needs of the town, voters and officials should look to the creation of a charter.

While few towns are currently governed by charters, it is critical for elected and appointed officials to pay heed to the details of that document. It is the most important document the town has governing the *process* of municipal operations. It can be amended or revised whenever the need arises and should be reviewed regularly to determine whether changes are warranted.

When charter changes are considered, officials should closely focus on the provisions of RSA Chapters 49-B and 49-D and should consult their town attorneys to assure that the process is followed correctly.