

To charter or not to charter: A legal and political primer

Select board member and practicing attorney recounts the steps that Chelsea took in enacting its first town charter – and the lessons learned along the way.

**By Benjamin Smith, practicing Attorney and
elected Select Board member, Town of Chelsea**

Years ago, as a newly elected member of the select board in the Town of Chelsea who filled the position of a former board member who had been recently indicted on federal criminal charges, I found myself working with my colleagues to not only try and correct past practices, but to also establish protocols and procedures that would prevent similar events from happening in the future. One tool that was not yet in our toolbox, but which we quickly explored as a town, was a charter.

A charter is a document that establishes the form of government for the municipality and provides guidance to municipal officers and officials as part of the municipality's "home rule" authority. Charters help municipalities establish rules by which business is conducted. For the Town of Chelsea in 2011-2012, the pressing interests of members of the community in the wake of criminal conduct involving a former select board member involved the need to create rules that would prevent similar future actions by town officials or officers, would provide remedies to address conflicts of interests of town officials or officers, including a recall process when these persons may no longer serve the best interests of the town. Residents also wanted provisions that would provide clear guidance on how officials were to conduct town business, including the

oversight of various officials.

Charters may be enacted under any of these forms of government, although their degree of complexity and characteristics will be different. Charters fall into four categories: (1) pure town meeting charters, (2) limited town meeting charters, (3) council/manager charters, and (4) council/mayor charters.

Breaking them down

For the first category, these towns have chosen to adopt charter provisions to govern the framework of municipal affairs even though no legislative authority is placed with the select board/town council. The town's business, including municipal appropriation, decisions related to capital or other improvements, is still decided upon by voters at town meeting. According to a 1992 Maine Townsman article entitled, "Municipal Charters, a Comparative Analysis of 75 Maine Charters" (August 1992), approximately 17 of the 75 municipalities with charters at that time fell into this category. These towns were smaller than others with regard to their populations (ranging from 1,000-8,000 persons) and most were adopted following the enactment of 30-A MRSA § 2631 et seq. that established a town manager form of government.

Under limited town meeting charters, generally the council is authorized to take action on any municipal decision by order, resolve, or ordinance, except that voters at town meeting decide the amounts to be appropriated to fund municipal operations through either taxing or borrowing. According to the 1992 Maine Townsman article, 13 of the 75 charters were of this type and populations for these

towns/cities ranged between 1,000 and 13,000 inhabitants.

Under council/manager charters, the distinguishing feature is that all legislative authority resides with the city or town council. At the time of the 1992 Maine Townsman article, 33 of the 75 municipal charters were of this type, and the population of these towns/cities ranged between 1,700 and 65,000 residents.

The final category, council/mayor charters, vests executive and administrative responsibilities to city mayors/managers. Characteristics of these charters include that the mayor is elected by the full electorate rather than chosen/appointed by the town council, the mayor has the power to veto (including in some instances budget line-item vetoes), and the mayor is given various powers of appointment.

Title 30-A contains various process and timing requirements for municipalities wishing to enact new charters or pursue amendments of existing charters, which are detailed in 30-A M.R.S. § 2101 through 2109. Although the legislative authority governing towns and cities in Maine are different depending on the various forms of government chosen, the process for establishing new charters or amending charters is the same. This is true regardless of whether authority is vested in a select board, council/manager, or mayor/manager form of government. This is because, under section 2105 of Title 30-A, "[t]he 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

Ben Smith is a current select board member and tax assessor of the Town of Chelsea, where he has held these positions since 2011 and previously served as chair of both boards. Ben also served as chair of the charter commission in the Town of Chelsea. He and his law partner James Bass, of Soltan Bass Smith LLC, also represent municipal entities, businesses, and other private entities in municipal and government matters. Ben can be reached at 207-621-6300 or via email at: Benjamin.Smith@SoltanBass.com.

not accepted the provisions of section 2528." Section 2528 pertains to the secret ballot process governing towns' election of town officials or for municipal referenda elections.

Understanding the process

At a high level, the process for establishing a new charter first involves an initial vote on the establishment of a charter commission that is initiated either through a citizen petition process or by warrant article passed by the town establishing an election at which the question is presented to the voters. The process is set forth in 35-A M.R.S. § 2102. If this vote is successful, a commission is established based on certain members which are appointed and others which are elected. The membership and procedure for appointment and election of members is set forth in 35-A M.R.S. § 2103.

Once a charter commission is established, the commission is required to hold an initial organizational meeting during which members elect officers. This meeting is then followed by various other public meetings, which can take place over the course of several months. During these meetings, commission researches and investigates different town/city charters, invites public input from members of the commission as well as the general public, narrows down and chooses provisions that voters may wish to adopt based on needs and concerns in the given municipality. Perhaps the most time consuming work during this pe-

riod involves the commission's review of draft language for a charter and revisions, which can be refined over the course of several public meetings.

After the commission has produced a comprehensive draft, which has been reviewed by counsel, the charter commission issues a proposed charter along with an explanation of the charter provisions to be published and posted. A public hearing is held at which time the commission receives public input on the proposed charter. If time permits, additional public hearings may be held. These hearings are noticed through posting of the draft charter and report of the charter commission in the manner ordinarily required as well as through publication in the newspaper. Based on the public hearings, the commission may amend the charter provisions. Thereafter, the commission generally provides a final report and a final proposed charter. Following appropriate notice and procedure to place the final charter before voters by referendum vote,

voters of the municipality vote on the proposed charter.

Fact-specific needs

Needs of municipalities across the state vary according to their geographies, economic realities, histories and traditions. For the Town of Chelsea in 2011-2012, our commission's proposed charter established eligibility criteria for elected and appointed municipal officers/officials, timelines governing business to be conducted during the fiscal year, including, the process by which budgets were proposed and vetted prior to town meeting. The proposed charter also established the terms of elected or appointed office (some of which differed from the periods set forth under the statute), the compensation structure for employees and officials, an outline of their responsibilities as well as those responsible for their oversight. Under the proposed charter, the select board had an affirmative obligation to fill vacancies in office.

Helping your employees
save for their futures
is one of the best moves
you can make!

Simple ✓
Convenient ✓
High Quality ✓
Low-Cost ✓

MAINE
START

MaineSTART is the Defined
Contribution program from Maine
Public Employees Retirement
System (MainePERS).

Contact: Gary Emery

Tel: 207-512-3116

E-mail: Gary.Emery@mainepers.org

www.maine-start.org

SBS

SoltanBassSmith LLC
ATTORNEYS AT LAW

Whether needing advice with land use, code enforcement, charter and ordinance development, tax, municipal liability, litigation or governmental affairs matters, Soltan Bass Smith LLC's professionals provide premium services to our municipal, business and other clients without the premium pricing of larger Maine firms.

Contact Ben Smith today at 621-6300.

96 State Street -- Augusta, Maine -- soltanbass.com

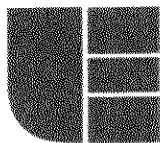
Finally, the charter established codes of conduct for municipal officers and officials as well as a recall mechanism that would allow for their removal when such persons forfeited their position through non-attendance, their actions violated conflict of interest policies and laws, or when they otherwise were no longer capable of serving the best interests of the town. Other provisions were also proposed in effort to return transparency and fair process to municipal business (e.g., the need for establishing meetings on a regular basis and at times when members of the public could be in attendance). The proposed charter also provided guidance to town officers and officials on fundamental aspects of town government, including by way of example, the duties of the town manager, which under the town's proposed charter would also include responsibilities to serve as the town's road commissioner.

There is no one-size-fits-all approach to municipal charters, and

the approach must always balance the needs of the community with the support and reception that will be received from voters. For the Town of Chelsea, in my opinion, residents and voters historically have been reticent of legal frameworks that might be seen as regulating the town's citizens or increasing powers of the town, regardless of whether such perceptions are accurate. The focus of the commission became the adoption of provisions that would provide needed guidance for the conduct of municipal business. The commission's recommendations had to avoid the perception and reality of overreaching into areas that were previously unregulated or were reserved to the voters through their participation at town meetings. Ultimately the process that led to the exploration of a new municipal charter in the Town of Chelsea proved to be fully supported and well warranted. Voters of the town approved the charter at the June 2013 town meeting election by a vote of 364-45.

There is also no perfect timing for municipalities wishing to explore the adoption of charters. Put another way, it is not necessary that your town or city has experienced turmoil before a charter commission is formed. A commission to explore a new municipal charter or charter amendment can be formed at any point. 30-A M.R.S. § 2102(5) requires the question posed to voters to simply state, "Shall a Charter Commission be established for the purpose of establishing a New Municipal Charter/revising the Municipal Charter?" Although the statute appears to anticipate that voters may ultimately want to adopt a new municipal charter/charter amendments, this result is not a fait accompli. The establishment of a charter commission does not bind the town or the voters to a future course of action or adopting of charter provisions/amendments. But the process does allow for the investigation and meaningful deliberation of protocols that may be of assistance to Maine towns and cities. ■

SOLUTIONS
SOLUTIONS
SOLUTIONS
SOLUTIONS



civil & environmental engineering
www.underwoodengineers.com

Communities that **work together**
thrive together.

*Providing Maine municipalities the ease of banking and security
with personal service and locally made decisions.*

To find one of our 16 banking locations,
visit KatahdinTrust.com



Community Banking at its Best! Since 1918.

MEMBER FDIC  EQUAL HOUSING LENDER

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

MMA's services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.

For more information visit the MMA website: www.memun.org