

Recall Provisions

To: Charter Commission

All,

Here is the verbiage from NHMA Lawyer Stephen Buckley regarding our options for recall:

***“Under RSA chapter 49-D can a municipal charter have a provision to permit recall of elected officials?”***

As provided in RSA 49-D:3, I (e) a town council charter may provide for citizen powers of initiative, referendum and recall as described in RSA 49-C. Thus, we must turn to RSA chapter 49-C, Local Option- City Charters, to determine what form of recall is permitted for City Charters, and thus for Town Council Charters. Unfortunately, nowhere in that chapter can the word “recall” be found. Instead, there is one statute that provides for the removal of a mayor, alderman and councilors. That statute, RSA 49-C:13, only permits the removal of a mayor or member of the city council or board of aldermen member by action of the council. In its entirety, RSA 49-C:13 provides as follows:

**49-C:13 Removal of Mayor, Aldermen, and Councilors. –**

- I. The elected body may, on specific charges and after due notice and hearing, at any time remove the mayor or one of its own members for cause, including but not limited to prolonged absence from or other inattention to duties, crime or misconduct in office, or as specified in the charter.
- II. Any vacancy occasioned by removal under this section shall be filled in the manner provided in the charter.

I would thus conclude that a town charter adopting the town council form of government would only be permitted to have a provision for recall of elected members of the town council by vote of the town council, and not by citizen petition. The reason for such removal could be as specified in RSA 49-C:13, I or as further specified in the proposed charter. However, your Commission would have the unqualified ability to provide for citizen petitions propose local legislation by initiative, or to challenge by referendum ordinances and bylaws adopted by a town council.”

Best,

Joe