

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

Chapter 49-D

LOCAL OPTION-TOWN CHARTERS

Section 49-D:1

49-D:1 Purpose and Intent. – It is the purpose of this chapter to implement the home rule powers recognized by part I, article 39 of the constitution of the state of New Hampshire by providing an outline of optional forms of town government which may be adopted by any municipality pursuant to the process and restrictions set forth in RSA 49-B. It is the intent of the general court to recognize that while the pressures of growth, demand for services and complexity of governmental issues may compel citizens to consider alternative forms of governance of towns, which forms have the same or similar structural appearance and powers traditionally found in cities, that the preservation of a community's unique sociological and cultural heritage and history as a town be encouraged by the provision of the optional forms of town government described in this chapter.

Source. 1991, 304:11, eff. Aug. 23, 1991.

Section 49-D:2

49-D:2 Town Council-Town Manager. –

I. As distinguished from adopting a city form of government described in RSA 49-C, a town may adopt a charter pursuant to RSA 49-B which abolishes the open town meeting and vests all legislative authority in a town council as the elected body or, in the alternative, vests authority to make appropriations in a budgetary town meeting. A charter establishing this form may reserve authority by the voters, at a referendum, over amendments to land use ordinances pursuant to RSA 675 and approval of bond issues consistent with RSA 33.

II. A charter establishing this form of government shall:

(a) Establish a legislative body as described in RSA 49-D:3.

(b) Provide for either the direct election by the voters or the selection by the elected body of a chair of the elected body and prescribe the term of office, powers and duties and other matters relative to the position.

(c) Provide for the appointment by the town council of a chief administrative officer to be called a town manager or similar title. This position shall head the administrative services of the town and shall be selected on the same basis, possess the same qualifications, be vested with the same authority, be charged with the responsibility and enjoy similar job security as town managers under RSA 37.

Source. 1991, 304:11, eff. Aug. 23, 1991.

Section 49-D:3

49-D:3 Optional Forms of Legislative Body. –

Town charters adopted under RSA 49-B and patterned as prescribed by this chapter may adopt a charter providing for one of the following types of legislative bodies:

I. Town council shall be an elected body which serves as the legislative and governing body of the town. Any charter providing for a town council shall be guided by the following:

(a) Notwithstanding any other provision of law, if a town should adopt a charter which provides for a town council form of government and no other form of legislative body, all powers and duties of selectmen, city councils and boards of aldermen, conferred by statute or the constitution, shall be conferred on the town council. The town council shall be empowered also to address all matters that general law requires to be addressed at the annual or a special meeting of a town, except those matters which by statute or charter must be placed upon the official ballot of the town. All procedural requirements prescribed by law relative to the actions of a city shall also apply to the actions of a town council.

(b) The charter shall provide for up to 15 members of the town council with an odd number chosen unless the vote of the chair is reserved for the purpose of breaking ties.

(c) Councilors may be elected for coterminous terms or terms may be staggered to assure continuity of experience and familiarity with issues, laws and procedures.

(d) Using the guidelines established in RSA 49-C, the charter shall specify at-large or district representation or a combination thereof; the manner of filling vacancies; powers of nomination, appointment, and confirmation; requirements for attendance and quorum; any domicile or eligibility requirements of up to one year in the town or district and continued domicile during a term; specific procedures for the preparation, presentation, public hearing, and adoption of annual budgets and designation of a fiscal year; procedures for issuing bonds and notes pursuant to RSA 33:8-e; an annual municipal election date pursuant to RSA 669:1; bonding of certain town officials and employees where not required by general law; and requirements for periodic independent audits of all town financial matters by a certified public accountant.

(e) Other matters of local concern may be included in a charter including, but not limited to, conflict of interest provisions which shall be at least as strict as those established in the general laws, citizen powers of initiative, referendum and recall as described in RSA 49-C, the adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy, and the adoption of a tax cap limiting the annual increases in amounts raised by taxes under the town budget. Such tax cap shall include an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. Such tax cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes, or interest and principal payments on municipal bonded debt, or capital expenditures which shall be by a supermajority vote as determined in the charter. An ordinance or accounting practice that redistributes excludable budget items from within the limits of the capped budget to outside the limits of the capped budget shall be by a supermajority vote as determined in the charter.

I-a. Official ballot town council shall be a variation of the town council which provides for voting on some or all matters that general law requires to be addressed at the annual or a special

meeting of a town, by official ballot. In such event, the town council shall be vested only with the limited authority to vote on all matters not voted on by official ballot. When an official ballot town council is included in any charter, the provisions of RSA 49-D:3, I, relative to town councils, shall apply in all respects, except with respect to those matters to be voted on by official ballot. When a charter provides for an official ballot town council it shall also specify with precision the budgetary items to be included on the official ballot, a finalization process for the annual budget, the process for public hearings, debate, discussion, and amendment of questions to be placed on the official ballot, the procedures for the transfer of funds among various departments, funds, accounts, and agencies as may be necessary during the year, and the applicability of the official ballot procedure to special elections. The majority vote required to approve bonds or notes shall be either 2/3 or 3/5 as adopted and provided for in the charter. If a charter does not specify which majority vote is required, then the required majority vote shall be 2/3. All voting by official ballot shall be in accordance with the procedures established in RSA 669:19-29, RSA 670:5-7 and RSA 671:20-30, including all requirements pertaining to absentee voting, polling places, and polling hours. Nonbudgetary items may be placed on the official ballot pursuant to this section notwithstanding the provisions of RSA 40:4-e and RSA 39:3-d.

II. Budgetary town meeting shall be a variation of the open town meeting but vested with the limited authority to vote on the annual town operating budget as presented by the governing body. When included in any charter the provisions of general law relative to town meeting, their warning, the right for petitioned articles at such meetings and conduct of such meetings shall apply to a budgetary town meeting in all aspects relative to the appropriation of funds, including the approval of bond issues. When a charter provides for a budgetary town meeting it shall also delineate procedures for the transfer of funds among various departments, funds, accounts and agencies as may be necessary during the year.

II-a. Official ballot town meeting shall be a variation of the open town meeting which provides for voting on some or all warrant articles, including part or all of the annual town operating budget, by official ballot. In such event, the open town meeting shall be vested only with the limited authority to vote on all matters not voted on by official ballot. When an official ballot town meeting is included in any charter, the provisions of general law relative to town meetings, their warning, the right for petitioned articles at such meetings, and the conduct of such meetings shall apply to the official ballot and open town meeting in all respects. The majority vote required to approve bonds or notes shall be either 2/3 or 3/5 as adopted and provided for in the charter. If a charter is silent with regard to such required majority, then the majority vote shall be 2/3. When a charter provides for an official ballot town meeting it shall also specify with precision the budgetary items to be included on the official ballot, a finalization process for the annual budget, the process for public hearings, debate, discussion, and amendment of questions to be placed on the official ballot, the procedures for the transfer of funds among various departments, funds, accounts, and agencies as may be necessary during the year, and the applicability of the official ballot procedure to special meetings. All voting by official ballot shall be in accordance with the procedures established in RSA 669:19-29, RSA 670:5-7 and RSA 671:20-30, including all requirements pertaining to absentee voting, polling places, and polling hours. Nonbudgetary items may be placed on the official ballot pursuant to this section notwithstanding the provisions of RSA 40:4-e and RSA 39:3-d.

III. Representative town meeting shall be a variation of the open town meeting, but with legislative authority vested in a group of individuals elected to represent districts within the town. Any charter providing for a representative town meeting shall be guided by the following:

(a) Notwithstanding any other provision of law, all powers of the town meeting conferred by statute or the constitution shall be conferred on the representative town meeting. The representative town meeting shall be empowered to address all matters that the general law requires to be addressed at the annual or a special town meeting, except those matters which by statute or charter must be placed on the official ballot of the town. All procedural requirements prescribed by law relative to the actions of a town meeting shall also apply to the actions of a representative town meeting.

(b) The charter shall specify the manner of district representation; the manner of filling vacancies; powers of nomination, appointment, and confirmation; requirements for attendance and quorum; any domicile or eligibility requirements of up to one year in the town or district and continued domicile during term; specific procedures for the preparation, presentation, public hearing, and adoption of annual budgets and designation of a fiscal year; an annual municipal election date pursuant to RSA 669:1; bonding of certain town officials and employees where not required by general law; and requirements for periodic independent audits of all town financial matters by a certified public accountant.

(c) In addition to the elected members, the board of selectmen, town clerk, and chairman of the town budget committee shall be members-at-large. The members-at-large shall have the same rights, privileges, and duties with respect to representative town meeting as the elected members.

(d) The charter may provide for referenda on certain issues to the registered voters of the town-at-large at special town meetings called for the sole purpose of deciding those issues.

Source. 1991, 304:11. 1994, 87:3. 1995, 53:3, 4. 2003, 205:1; 289:12, 13. 2004, 254:2. 2011, 234:4, eff. July 5, 2011. 2021, 88:3, eff. Aug. 20, 2021.

Section 49-D:4

49-D:4 Non-Interference by the Elected Body. – The elected body shall act in all matters as a body, and shall not seek individually to influence the official acts of the chief administrative officer, or any other official, or to direct or request, except in writing, the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers of their duties. Any member violating the provisions of this section, as determined through procedures established in the charter, shall forfeit his office.

Source. 1991, 304:11, eff. Aug. 23, 1991.

Section 49-D:5

49-D:5 Transition Provisions. – Any charter adopted pursuant to this chapter may provide for the efficient and timely transition to any new form of government including, but not limited to, the holding of any necessary special elections, the phasing in of any aspect of the new form of government, expenditure authority during any transition and the integration of the remaining terms of office of any existing municipal officers as part of any new elected body established by the charter.

Source. 1991, 304:11, eff. Aug. 23, 1991.

