

**Preliminary Report  
of the  
Salem, New Hampshire  
Charter Commission**

**November 5, 2009**

**Commission Members**

Arthur Barnes

Kevin Breen

Robert Campbell, Chairman

Stephen Campbell

Annette Cooke

William Ganley

Patrick Hargreaves, Vice Chairman

Mike Lyons, Secretary

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## **Summary**

The charter being proposed for the Town of Salem establishes the form of government as Official Ballot Town Council as provided by RSA 49-D:3, I-a. The items reserved for official ballot are largely budget and other appropriation items, and matters involving the transfer of real property or rights thereto. Other matters, including most matters that would usually be acted on at the second deliberative session with the current charter, are left to the legislative authority of the Council.

In addition to the discussion of the charter, there is a section that identifies the charter provisions that respond to the requirements of RSA 49-D:3.

The proposed charter is included as part of this preliminary report.

This report is furnished in compliance with the requirement of **RSA 49-B:4, V.**

## **Comparison with existing charter**

Salem currently operates under a charter form of Official Ballot Town Meeting, where certain matters are placed on the official ballot and other matters are acted upon at a deliberative session of the Town Meeting that is usually held on the Saturday after the annual election. The budget and other items to be placed on the official ballot, except zoning articles and other items required by statute to be on the ballot, are considered at a "First deliberative session" in early February where they may be debated and amended.

The proposed charter provides for an Official Ballot Town Council where the council is both the governing body and the legislature, except that certain legislative actions are reserved for the official ballot. The items that are reserved for the official ballot include the items that are on the official ballot for the current Town Meeting charter, and some items that would be considered at the deliberative session following the annual election. The proposed charter contains no deliberative session either before or after the annual election.

The proposed charter retains the Budget Committee provisions of RSA 32.

The proposed charter includes recall provisions for elected officials that were not included in the current charter.

Matters related to land use, including election of the Planning Board and Zoning Board of Adjustment, and the adoption or amendment of zoning laws, are the same in both charters.

The proposed charter contains a number of procedural requirements about which the current Official Ballot Town Meeting charter is silent; those aspects having been left to the governing statutes.

### **Major Elements of the Charter**

The proposed charter is based on the requirements of RSA 49-D:3, including Section I-a which describes requirements and authority for an Official Ballot Town Council form of legislature. The major elements of the charter are:

1. The Official Ballot Town Council legislature where the charter identifies certain financial and other items that must be acted on by official ballot
2. The charter maintains current elected positions (Town Clerk, Tax Collector, Treasurer, Moderator), Planning Board, and Board of Adjustment
3. Elimination of the “open town meeting” session associated with the official ballot in the current Salem charter
4. Retention of a budget committee powers consistent with adoption of RSA 32:14
5. A budget process that includes a default budget set by the Council, with strict definitions of what is to be included in the default budget, which is an element of the process for finalizing the budget by the official ballot
6. Provisions for initiative petition, referendum, and recall
7. A Code of Ethics chapter that is at least as strict as the applicable state statutes

8. A transition plan that implements the new Charter and Council by July 1, 2010

### **Rationale for the New Charter and Official Ballot Charter Provisions**

Salem has been operating under an Official Ballot Town Meeting Charter that was adopted around the time when "Senate Bill 2" Town Meetings were being adopted by many New Hampshire towns. The charter provided for limited official ballot with a "First session" preceding the official ballot session and a second deliberative session on the Saturday after the election.

An unexpected result of that format has been that both deliberative sessions are poorly attended and susceptible to situations where a very small fraction of registered voters can affect the business of the town in unexpected ways disproportionate to their numbers. In many cases the turnout was on the order of one percent of the registered voters and it was common for many to leave the meeting after a particular article was considered.

There was a concern that a very small number could profoundly affect the legislation to be placed on the official ballot, perhaps contrary to the will of the greater electorate, and the commission investigated whether the statutes required a first deliberative session for an Official Ballot Town Council legislature.

The commission found no statutory provision that required the deliberative session, and engaged legal counsel to review that finding. The opinion provided by counsel was that there is no provision that requires the deliberative session in an Official Ballot Town Council charter.

In addition to the legal opinion, and not finding a requirement in the statutes, there is both precedent and rationale to support the approach that has been incorporated in the proposed charter. The precedent lies primarily in the land use statutes where the Planning Board prepares zoning amendments, holds public hearings, amends the articles if they choose, and places them on the ballot. Petitioned articles are also placed on the ballot after hearings but without amendment.

The other factor that supports elimination of the deliberative session is that the official ballot legislative provision is simply a variation of the Town Council's authority to legislate without any direct action of the electorate. A pure Town Council form would have the authority to legislate without any resort to the electorate, and within that structure there is precedent for initiative and referendum without a deliberative session. Therefore, it appears to follow that placing a council-proposed or petitioned item on the ballot should not require a town-meeting-like session where less than one percent of the electorate would have the power to destroy their proposal and take away the means for the greater electorate to take effective action at the ballot box.

## **Compliance Statements and Citations**

The following section of this preliminary report cites provisions of The Charter that address the “. . . charter . . . shall . . .) provisions of RSAs 49-D2 and 49-D3. The format is to copy the applicable section or statement of the statute in the order in which it appears, followed by citation of the charter provision that applies. The citation is in boldface in a different font, set below the requirement.

### **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.

### **Article 3 of The Charter**

(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.

### **Section 3.2 of The Charter**

(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.

### **Article 4 of The Charter**

**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.

**The charter provides for 9 members.**

(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.

**Councilors are elected for staggered 2 year terms. §3.1**

(d) Using the guidelines established in RSA 49-C, the charter shall specify at-large or district representation or a combination thereof;

**The charter specifies a combination of at-large and district representation, with 3 at-large and 6 by districts. §3.1**

the manner of filling vacancies;

**Vacancies on the council are filled by appointment by the remaining members of the council. §3.4 – conforming to statute**

powers of nomination, appointment, and confirmation;

**Powers of the Council are defined in Article 3. Powers of appointment of other positions are defined in the descriptions of appointed offices, commissions, and committees.**

requirements for attendance and quorum;

**Quorum is 5 Councilors §3.6.2**

**Quorum for committees is a majority per §8.13C**

**The Council is directed in §3.15 to adopt rules of attendance and forfeiture of office for all appointed boards and commissions.**

any domicile or eligibility requirements of up to one year in the town or district and continued domicile during a term;

**One year domicile and residency §3.3.1**

specific procedures for the preparation, presentation, public hearing, and adoption of annual budgets and designation of a fiscal year;

**Fiscal year is January 1 through December 31 §5.1**

procedures for issuing bonds and notes pursuant to RSA 33:8-e;

**Per RSA 33:8-e, the Council is directed to follow the procedures of RSA 33:8-d for the issuance of bonds and notes. §5.13**

an annual municipal election date pursuant to RSA 669:1;

**Second Tuesday in March §2.6**

bonding of certain town officials and employees where not required by general law;

**Bonding is directed in §4.10 C**

and requirements for periodic independent audits of all town financial matters by a certified public accountant.

**Requirement is provided in §4.10 B**

(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,

**Provisions for initiative, referendum, and recall are described in Article 7.**

and adoption and periodic review of an administrative code,

**Provided for in §3.10**

a merit personnel system, a purchasing system, and a town investment policy.

**Not addressed in the charter. Left to Council for action.**

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,

**All items, including budget items, to be included on the official ballot, are identified in §3.7.1**

a finalization process for the annual budget,

**The finalization procedure for the annual budget is defined in Section 5.3 through 5.6**

the process for public hearings, debate, discussion, and amendment of questions to be placed on the official ballot,

**Provisions for public hearings, debate, discussion, and amendment of questions to be placed on the official ballot are included in Article 7.**

the procedures for the transfer of funds among various departments, funds, accounts, and agencies as may be necessary during the year,

**The procedure is authorized in §5.9**

and the applicability of the official ballot procedure to special elections.

**The official ballot applies to special elections. §3.7.1**

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, than the required majority vote shall be 2/3.

**The requirement for a 2/3 majority is provided in the charter. §5.13**

**END OF CITATIONS OF CHARTER PROVISIONS**