

TOWN OF SALEM, NEW HAMPSHIRE



CHARTER REFORM COMMITTEE
REPORT AND RECOMMENDATION

SEPTEMBER 19, 2008

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LIST OF EXHIBITS

- EXHIBIT A Minutes of April 28, 2008 Board of Selectmen Meeting
- EXHIBIT B Minutes of May 12, 2008 Board of Selectmen Meeting
- EXHIBIT C RSA 32, RSA49-B and RSA 49-D
- EXHIBIT D Letter from N.H. Department of Revenue Administration dated April 15, 2008
- EXHIBIT E Chapter 243 (HB 1226) of the Laws of the 2008 Legislative Session
- EXHIBIT F Town of Salem Charter
- EXHIBIT G Board of Selectmen Charge to the Committee dated May 12, 2008
- EXHIBIT H Copies of the Committee's Meeting Schedule and Agenda
- EXHIBIT I Salem Charter Reform Committee Bylaws
- EXHIBIT J The Municipal Charter Process for Towns by the Local Government Center
- EXHIBIT K Copies of The Eagle Tribune Articles and Editorials covering Committee Activities
- EXHIBIT L Proposed Budget Process Charter Amendment
- EXHIBIT M Community Development Notes on Change of Fiscal Year
- EXHIBIT N Barbara Lessard Bond Threshold Presentation
- EXHIBIT O Russell Frydryck Bond Threshold Presentation
- EXHIBIT P Chapter 40 of the Town of Salem Municipal Code; Ethics
- EXHIBIT Q Memorandum of Pamela Berry dated July 21, 2008 on Coordinating Capital Needs

TOWN OF SALEM, NEW HAMPSHIRE

CHARTER REFORM COMMITTEE

Report and Recommendation to the Board of Selectmen

I. BACKGROUND

A. Establishment of Committee.

At its April 28, 2008 meeting, Salem's Board of Selectmen voted to create a study committee to evaluate certain minor changes to the Town Charter. The Selectmen established the committee, known as the Salem Charter Reform Committee, to study and report on possible Charter revisions including clarifying the budget process with precision, changing Salem's fiscal year and lowering the threshold for approval of bond articles. The minutes of the Selectmen's April 28, 2008 meeting are attached as Exhibit A. The Committee would work through the late spring and summer of 2008 and provide a final report to the Selectmen no later than September 22, 2008. The Selectmen provided that the Committee would dissolve on September 23, 2008.

B. Committee Appointments.

The Charter Reform Committee has seven members, three the Selectmen appoint from the community at large and four designees from existing Town boards and the School Committee. During its May 12 meeting, the Board of Selectmen appointed **Russell E. Frydryck**, **Barbara Lessard** and **Daniel Norris** as the members at large and **Laurence Belair** as an alternate member. **Michael Carney** is the Budget Committee's representative on the Committee and **Brian Keaveny** is the Capital Improvements Committee designee. **Mike Lyons** is the

Board of Selectmen representative. The School Board appointed **Pamela Berry** to the Committee and **Robert Bryant** the School Committee's alternate. The minutes of the Selectmen's May 12 meeting are attached as **Exhibit B**.

C. **The DRA Letter.**

The topic of reviewing the Charter arose in connection with an inquiry the Town made of the New Hampshire Department of Revenue Administration (DRA). The Town asked DRA to help clarify the Budget Committee's role in Salem's form of government. The inquiry concerned an apparent oversight in RSA 49-B, which governs municipal charters. RSA 49-B:13, III, makes towns that adopted the budgetary town meeting form of government (RSA 49-D, II) or a representative town meeting form of government (RSA 49-D, III) eligible to adopt the Municipal Budget Act (RSA 32). The Municipal Budget Act establishes the budget committee's authority and procedures. Salem's adopted form of town meeting government is the official ballot town meeting under RSA 49-D:3, II-a, which is a variation of the open town meeting that provides for voting on warrant articles, including the budget, by official ballot. The town was concerned because official ballot town meeting under RSA 49-D:3, II-a did not appear to permit the adoption of the Municipal Budget Act and a budget committee. This is in contrast to the budgetary town meeting and representative town meeting, which are expressly authorized to adopt the Municipal Budget Act. This raised a concern that Salem's form of government may not permit a budget committee's involvement in the Town's budget process. RSA 32, RSA 49-B and RSA 49-D are attached as **Exhibit C**.

The Department of Revenue Administration responded to the Town's inquiry by letter dated April 15, 2008. DRA's letter is included as **Exhibit D**. DRA's letter addressed two issues. First, DRA recommended that the Town seek

to amend RSA 49-B:13, III, so that it would include official ballot town meeting under RSA 49-D:3, II-a among the town meeting forms of government that may adopt the Municipal Budget Act.¹ DRA also recommended that the Town amend its Charter to clarify “with precision” its budget preparation and finalization process. DRA reviewed Salem’s history of having a Budget Committee and holding elections for Budget Committee positions as it confirmed that DRA will recognize Salem’s Budget Committee’s role in the budget adoption process under RSA 32. Nevertheless, the Board of Selectmen thought it advisable to further address DRA’s recommendation to amend the Charter to clearly specify the Town’s budget process.

D. The Town Charter.

The Town of Salem's current charter was adopted at Town Meeting in March 10, 1998 following the work of the Town’s last Charter Commission that was appointed in and met during 1997. The Town of Salem Charter is attached as **Exhibit F.**

E. The Committee’s Charge.

The Board of Selectmen defined the scope of the Committee’s work in a document referred to as the Committee Charge. The Salem Charter Reform Committee Charge is attached as **Exhibit G.** The Charge is organized in three separate sections. The first asks the Committee to consider what state law would consider certain minor changes to the Charter. Those changes include specifying the budget process, changing the Town’s fiscal year, changing the bond passage threshold and any other minor changes the Committee may recommend.

¹ Acting upon DRA’s advice, the Town successfully pursued the amendment of RSA 49-B:13, III and applicable provisions of the Municipal Budget Act to address the concern addressed in DRA’s April 15, 2008 letter. See Chapter 243 (HB 1226) of the Laws of the 2008 Legislative Session attached as **Exhibit E.**

The second item in the Charge asks the Committee to consider the issue of coordination of capital needs between the Town and School District.

The third element of the Charge asks whether the Board of Selectmen should ask Town Meeting to establish a Charter Commission to make major changes to the Charter the Committee may recommend or change the form of government.

F. The Committee's Meeting Schedule.

The Committee met nine times from its first meeting on May 22, 2008 through its final meeting on September 18, 2008. Copies of the Committee's Meeting Schedule and Agenda are included as Exhibit H. The Committee is scheduled to deliver its report to the Selectmen at the September 22, 2008 Board of Selectmen's meeting.

At its first meeting on May 22, the Committee elected officers. Daniel Norris was elected Committee Chairman and Brian Keaveny Vice-Chairman. Michael Lyons was elected Secretary.

At its next meeting on June 16, the Committee adopted its bylaws. The Salem Charter Reform Committee Bylaws are attached as Exhibit I. At this meeting attorney representatives Maura Carroll Esq. and Judy A. Silva, Esq. from the Local Government Center of the New Hampshire Municipal Association (LGC) provided the Committee with legal and historical background related to municipal charters and the procedure to amend them. LGC spent significant time with the Committee discussing, among other thing, the differences between charter amendments and revisions and the requirement to specify the budget

process with specificity. LGC responded to a number of questions from Committee members about the amendment process as it relates to the specific work of the Committee. LGC provided each Committee member with a copy of educational materials titled: The Municipal Charter Process for Towns, a copy of which is attached as Exhibit J.

The Committee's next five meetings, through August 21, 2008, were work sessions at which the Committee addressed the matters in the Board of Selectmen's Charge to the Committee. On Friday September 5, the Committee held a televised public hearing in the Knightly Meeting Room of Town Hall to hear input from members of the public on the matters the Selectmen asked the Committee to address. Only a few members of the public spoke at the public hearing, but the input was helpful and meaningful to the Committee.

The Committee met for the final time on Thursday, September 18 to decide what recommendations it would make to the public.

F. Additional Information.

Copies of articles and editorials from The Eagle Tribune covering the Committee's activities are attached as Exhibit K.

II. SPECIFYING THE BUDGET PROCESS

DRA's April 15, 2008 letter to the Town recommended that the Town amend its Charter to clarify "with precision" the budget preparation and finalization process. This recommendation is based upon the language of RSA 49-D:2-a that governs Salem's form of government. The statute does not impose numerous requirements for a charter in a town that adopts the official ballot town meeting form as Salem has. However, one of the few matters that is required to be described in detail is the budget process. The statute requires the Charter to "specify with precision the budgetary items to be included on the official ballot [and] a finalization process for the annual budget" The Committee concluded that detail about the Town's budget process is required to be included in Salem's Charter, and the Charter should be amended to add that detail.

The Committee discussed this issue at length over the course of several meetings. The Committee ultimately decided that this part of the Selectmen's Charge required the Committee to specify the current budget process. The Committee, therefore, limited its discussions concerning this matter to drafting a proposed Charter amendment that specifies the Town's current budget process.

With significant input from the Budget Committee and Selectmen's representatives, the Committee drafted and discussed a proposed Charter amendment to specify the Town's budget process with precision as required by RSA 49-D:2-a. The Committee discussed its proposed amendment with the Town Manager, who provided helpful input for the process. DRA also reviewed the Committee's proposed amendment and suggested a few revisions. The

Committee accepted DRA's recommendations. A copy of the Committee's proposed budget process Charter amendment is attached at Exhibit L.

RECOMMENDATION: THE COMMITTEE RECOMMENDS THAT THE TOWN OF SALEM CHARTER BE AMENDED TO ADD THE DESCRIPTION OF THE CURRENT BUDGET PROCESS IN THE FORM OF THE AMENDMENT THE COMMITTEE DRAFTED AND INCLUDED AS EXHIBIT L.

The Committee adopted this recommendation by a 7-0 vote.

III. CHANGE OF FISCAL YEAR

Any municipality which has elected one of the forms of town government described in RSA 49-D, may choose to have its fiscal year end on December 31 or June 30. Salem's fiscal year ends December 31. The Selectmen asked the Committee to study the issue of fiscal year change and make a recommendation to the Board of Selection about it.

In preparation for the Committee's discussion considering a change in the Town's fiscal year, the Committee Chairman met with the Town Manager and his senior staff on July 8, 2008 to receive input on this topic. The Town's Community Development Director prepared a list of issues relative to this topic, which are attached as Exhibit M.

Other input from the Town's senior staff included:

- The optimum time to bid road work is in the winter. There is significant pressure to maximize the number of bids received for a project. Requesting bids before funds are approved could be problematic for that goal. One failed vote could cause contractors not to waste their time bidding on future Salem work.
- Although it is not a significant concern, the police department is out of compliance with a federal grant each year because there is not approved budget for the first three months of the year.

- Changing the fiscal year to June would put significant strain on the finance department and assessor's office. They would be closing the tax year and preparing for an audit at the same time tax payments are due and collected. This is also a potential morale issue because it would likely mean that no one in the finance department could schedule vacation during the summer. There was anecdotal feedback from other towns about that.
- A benefit of the current schedule is that the auditors get to spend more time with the finance staff because Salem closes its year outside of the auditors' busy season.
- A December fiscal year allows the Public Works Department to budget for snow removal more efficiently because if there is more snowfall than expected, that number can be increased at Town Meeting.
- The change in the fiscal year would cause residents to have a higher tax bill because the tax bill for the transition twelve-month period will be based on eighteen months of property tax. That will be hard for many residents to pay and difficult to explain and justify to residents. A positive aspect of this is that the Town would be ahead of its cash tax collections by six months.
- The impact on the public must be taken into account. The tax bill is one issue. Also, if the town changes its fiscal year and, therefore, its meeting dates, but the School District does not, it

could be an overly-burdensome meeting schedule to have it spread out from January through May each year.

The consensus of the Town's senior staff seemed to be that the benefits from a change in the Town's fiscal year do not outweigh the taxpayer burden and other concerns. However, it also seemed clear that this issue would be worth revisiting in the event the Town's form of government changes because the concerns about meeting schedules for the governing body, there being no limitations on the fiscal year that can be selected and other matters would make a fiscal year change less burdensome. The Committee recognizes this very well may be the case.

In its discussions, the Committee considered and discussed the input from senior Town staff as well as additional issues. The Committee had a significant concern about taxpayers being required to pay eighteen months' worth of property taxes during a twelve-month transition period if the fiscal year changed. In the Committee's unanimous view, the potential benefits of changing the fiscal year do not outweigh this taxpayer burden.

**RECOMMENDATION: THE COMMITTEE RECOMMENDS THAT
THE TOWN OF SALEM CHARTER NOT BE
AMENDED TO CHANGE THE MONTH OF
THE TOWN'S FISCAL YEAR END FROM
DECEMBER TO JUNE.**

The Committee adopted this recommendation by a 7-0 vote.

IV. BOND PASSAGE VOTING THRESHOLD

The committee held several discussions on the topic of changing the threshold for bond passage from 2/3 to 3/5. Opinions among committee members were clearly split along two lines on the subject.

Recognizing this at its August 17 working meeting, Chairman Daniel Norris tasked two members of the Committee to submit separate reports on the topic for discussion, one in favor of changing the threshold and one against it. Committee member Barbara Lessard was tasked with writing the 2/3 position, and member Russell Frydryck was tasked with writing the 3/5 position. Mrs. Lessard's and Mr. Frydryck's reports are included with this report as Exhibit N and Exhibit O, respectively.

At its August 20 working meeting the Committee took up the merits of each report. There was no clear consensus about whether to recommend the Charter be amended to require a 3/5 supermajority for bond articles or retain the 2/3 threshold. Rather than submit a recommendation based upon a closely split decision on one supermajority voting threshold over the other, the consensus of the Committee is that the best course of action would be to let the voters decide the issue. Among many other factors, in reaching this conclusion the Committee found it compelling that the community has not had the opportunity to vote on this topic since the state law was changed to permit either a 2/3 or a 3/5 supermajority to approve bond articles. It is the consensus of the Committee that Town Meeting have the opportunity to be heard on this issue.

**RECOMMENDATION: THE COMMITTEE RECOMMENDS
THAT THE TOWN MEETING BE
GIVEN THE OPPORTUNITY TO SAY
IF IT WANTS THE BOND
THRESHOLD CRITERIA CHANGED
TO 3/5 OR REMAIN AT 2/3.**

The Committee adopted this recommendation by a 5-2 vote (Ms. Lessard and Mr. Carney were opposed).

V. OTHER CHARTER AMENDMENTS

A. Ethics.

Every sample charter the Committee reviewed in the course of its work includes a section on ethics. Salem's charter does not. The Committee evaluated the multiple ethics-related issues addressed in the sample charters and certain provisions of state law. However, before the Committee undertook to recommend ethics provisions to the Town Charter, it evaluated the current provisions related to ethics in the Town of Salem Municipal Code. Chapter 40 of the Municipal Code is the Code of Ethics for the Board of Selectmen and is attached to this report as Exhibit P.

The Code of Ethics in Chapter 40 is well-written and comprehensive. The Committee believes that Chapter 40 adequately addresses most of the ethical issues the Committee discussed. However, the issue of non-interference by the elected body appears to be of such importance that it is provided for in nearly every sample charter the Committee reviewed as well as state law. The Local Government Center's materials also highlighted this issue. The Committee believes Salem's Charter should similarly address this issue.

RSA 49-D:4 states:

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.

As do most other town charters, the Committee believes this issue is of paramount importance and should be addressed in Salem's Charter.

**RECOMMENDATION: THAT THE TOWN OF SALEM CHARTER BE
AMENDED TO ADOPT THE FOLLOWING
PROVISIONS RELATED TO NON-
INTERFERENCE WITH TOWN
ADMINISTRATION:**

Non-Interference with Town Administration

- A. The Board of Selectmen shall act in all matters as a body, and shall not seek individually to influence the official acts of the Town Manager or any other official.
- B. Except as expressly provided elsewhere in this Charter, neither the Board of Selectmen nor any of its members shall direct or request the appointment of any person to office or employment, or direct the removal, suspension, discipline, adjustment in pay, benefits, or working conditions of any employee by the Town Manager of any of the Town department heads.
- C. No Selectman shall give orders to or interfere with the performance of the duties of any of the administrative officers or employees, either publicly or privately. Nothing contained in this Section shall prohibit the Board of Selectmen from meeting with the Town Manager to discuss the operation or conduct of any department head or employee and to recommend an investigation and report by the Town Manager of any complaint.
- D. Any violation of the provisions of this Section by a Selectman shall constitute grounds for forfeiture of office. A majority of the Selectmen may after due notice and investigation hold a hearing and declare a vacancy if a member has interfered with administration in violation of this Section.

The Committee adopted this recommendation by a 7-0 vote.

B. Other Finance Amendments.

In addition to specifying the budget process the committee considered other amendments related to Town Finance. This included amendments on Borrowing Procedures, Lapse of Appropriations, Quarterly Budget Reports, and Transfer of Appropriations. The text of the specific provisions is in sections VI-6 thru VI-9 of the Proposed Budget Process Charter Amendment in Exhibit L.

**RECOMMENDATION: THE COMMITTEE RECOMMENDS THAT
THE TOWN OF SALEM CHARTER BE
AMENDED TO INCLUDE THE MATTERS
RELATED TO TOWN FINANCE IN
SECTIONS VI-6 THRU VI-9 OF EXIBIT L.**

The Committee adopted this recommendation by a 6-0-1 vote (Mr. Keaveny abstained).

VI. COORDINATION OF CAPITAL NEEDS

Item II in the Board of Selectmen's Charge to the Charter Reform

Committee reads:

Given the recent discussion amongst the public and the media relative to coordination of capital needs between the Town and School District, what is [the Committee's] on this issue? Can the Town and School District adequately plan long-term capital expenditures under the current form of government without adversely affecting the tax rate?

The question of cooperation between the Town and School District on capital projects government is both simple and complex. Using the private sector as an analogy, the three main ingredients of a successful project are a buyer, a seller and a value proposition. Bringing the analogy to a public bond-issue project, the Board of Selectmen or School Board is the "seller," the bonded project is the product and the taxpayers (or voters) are the "buyers."

The concept of cooperation is a simple and obvious proposition. Like any business deal, you must have a qualified and reputable seller, a willing buyer and a good "product." The buyer must be convinced that he or she needs the product, that it is fairly priced and that the buyer can afford to pay for the product regardless of the price. Similarly, when it comes to a bond issue project, the taxpayers must be convinced that the need is real, that every reasonable alternative has been explored, that the cost reflects real value and that taking on the long-term debt is both affordable and manageable. Unless a project advanced by either the Board of Selectmen or the School Board meets these basic parameters, it is unlikely the project will earn the taxpayers' support.

When it comes to coordinating the needs between the Town and School District, the issue becomes more complex. Publicly, the boards seem to pledge cooperation—the taxpayers and voters expect, and are entitled to, that basic level of professionalism. However, each board has different goals and responsibilities and, because the Town and School District are autonomous entities, cooperation cannot be forced upon either of them. Ultimately, they are competing for the same tax dollars. Their respective schedules, based upon each entity's needs and prior project rejections, will ultimately collide. While long range planning may legitimately present bonded expenditures as coordinated and well-timed, the reality is that the coordination is not the reality because only one or two voter rejections of a project will throw the entire schedule into disarray, setting into motion more competition for the following year's funds.

The answer may lie in even better planning and presentation, or selling, of a bonded project from its conception. Even though recent examples have shown that such efforts will not guaranty a successful vote on a bonded project, the sellers of a project must not only undertake cost analyses of the options for each project, illustrate the tax impact of bonding versus capital spending, of repairs versus replacing and of initial costs versus on-going operational expenses, they must demonstrate those processes to the voters and convince them of the value. Earning voter confidence is paramount to the success of voter approval. If each project can earn meritorious support, integrating the timing of major projects from both sides becomes far more achievable. To put it simply, earn the voters' confidence for each project, then lay out a near-term (perhaps five-year) plan that shows the taxpayers that they can afford multiple projects that are properly scheduled. Even then, however, on a voter-by-voter basis, the requisite supermajority vote may not be attained if the voters believe they cannot afford to pay for it despite that it is a good and desirable project.

That is not to say that the School Board, the Selectmen and their respective staffs have previously failed in their responsibility. Quite to the contrary, they have expended enormous energies, given selflessly of their time, talent and resources, promoting important projects in which they strongly believe. However, as long as a super-majority is needed to pass bonded articles, the leaders must continually re-dedicate their efforts to finding the answers to the taxpayers' concerns, be they compromises, consolidations or alternative solutions.

A graph the Committee reviewed comparing the percentage of bond issues that passed under the former Town Meeting form of government versus the present form demonstrates that it is more difficult to pass bonds under Salem's current form of government. Lowering the percentage may very well increase the chances that bonds will pass with higher frequency. The Committee heard arguments that under the prior form of government, a smaller, presumably better-informed meeting made better long term decisions compared with the current process that, for the most part, relies on the media to carry the message to the several thousands who will vote. For the advocates of change, the choices appear to be either lowering the supermajority percentage required to pass bonds or changing the form of government.

The Committee's School Board representative, Pamela Berry, prepared a memorandum to assist the Committee in its consideration of this issue. Her memorandum is included as Exhibit Q.

VII. CHARTER COMMISSION

The Committee's final charge was to determine if the Board of Selectmen should exercise its authority under RSA 49-B:3, I and call for the formation of a Charter Commission for either making major changes (revisions) to the Town Charter or considering another form of government.

Given that the Committee had been tasked with looking into both major changes (revisions) and minor changes (amendments), it decided to look at any recommended changes without considering whether the changes were amendments or revisions. The Committee will leave it to the Board of Selectmen to determine the proper process to advance any of the Committee's recommendations if it chooses to do so.

On the question of whether to form a Charter Commission, the Committee arrived at a viewpoint on this subject, although perhaps for different reasons. As stated previously in this report, the Committee had several working meetings on various elements of its charge from the Board of Selectmen. On several occasions during these discussions the topic of a different form of government came up, and how another system might have certain advantages. During the earlier discussions, the Chairman and Committee members realized they were not yet ready to take up that portion of the charge.

Also on a number of occasions, the Committee recognized that forming a Charter Commission and subsequent periodic review of the Charter is healthy for the community. This is an opinion that the Local Government Center shared in its presentation to the Committee. The last such review for the Town of Salem occurred in 1998.

**RECOMMENDATION: THE COMMITTEE RECOMMENDS THAT
THE BOARD OF SELECTMEN EXERCISE
ITS AUTHORITY UNDER RSA 49-B:3, I AND
ASK TOWN MEETING IF IT WANTS TO
FORM A CHARTER COMMISSION.**

The Committee adopted this recommendation by a 6-1 vote (Ms. Lessard was opposed).

VIII. CONCLUSION


The Committee considered the issues discussed in this report in the order that the issues were presented in the Charge to the Committee from the Board of Selectmen. The Committee believes its recommendation about specifying the Town's budget process ought to be considered a timing priority because the Town's Charter does not comply with state law on that point. Otherwise, the Committee assigns no particular order of timing or substance priority to its recommendations. The Committee will leave it to the Board of Selectmen to assign any order of priority to these matters the Board of Selectmen may deem proper.

The Committee considered each item of the Committee's Charge separately. In doing so, the Committee did not consider the impact any recommended change to the Charter would have on the Committee's other recommendations. This approach appeared to be proper in view of the fact that the Selectmen could choose to disregard any or all of the Committee's recommendations or advance them in any order it may decide.

Under the Selectmen's vote creating the Charter Reform Committee, the Committee will dissolve on September 23, 2008. Consequently, the Committee's final action will be its presentation of its report to the Board of Selectmen, which is scheduled on September 22.

The foregoing Report and Recommendation to the Board of Selectmen
was adopted by vote of the Town of Salem Charter Reform Committee on the 18th
day of September, 2008.

Date: September 19, 2008



Daniel J. Norris, Chairman

EXHIBIT A

Minutes of April 28, 2008
Board of Selectmen Meeting

**MINUTES OF THE
BOARD OF SELECTMEN**

**MEETING OF
April 28, 2008**

The Board of Selectmen held a meeting on Monday April 28, 2008, at Salem Town Hall, 33 Geremonty Drive, Salem, NH.

PRESENT: Chairman Elizabeth A. Roth, Vice-Chairman Arthur E. Barnes, Secretary Michael J. Lyons, Selectman Everett P. McBride, Selectman Patrick Hargreaves and Town Manager Mr. J. Sistare.

CALL TO ORDER

Chairman Roth began by calling the meeting to order at 7:02 p.m. She then joined the Board in the Pledge of Allegiance, and introduced members of the Board and Town staff.

1. Meeting Minutes

MOTION: by Selectman Lyons

Move to accept the minutes of the Regular meeting on April 7, 2008 as written

SECOND: Selectman McBride

VOTE: 5-0-0

The motion carried unanimously.

MOTION: by Selectman Lyons

Move to accept the minutes of the Interview Session on April 14, 2008 as written

SECOND: Selectman McBride

VOTE: 4-0-1 (Selectman Hargreaves abstained)

The motion carried unanimously.

MOTION: by Selectman Lyons

Move to accept the minutes of the Regular meeting on April 14, 2008 as written

SECOND: Selectman McBride

VOTE: 5-0-0

The motion carried unanimously.

2. Chairman Comments

Chairman Roth reported that the Committee for the Depot train station is moving forward and provided details of the kickoff fundraising event to take place on May 29, 2008 at 6:00 p.m. at Devito's restaurant. She stated there would be prizes and that they would welcome private donations.

3. Appoint Representatives to the Greater Derry Citizen Corps Council

Mr. Sistare provided an explanation of what the function is of the Citizen Corp Council, stating that Chief Breen has recommended both Messrs. Molinet and Dupre as representatives on the Greater Derry chapter of the council. He handed over to Mr. Molinet

1 to answer any questions from the Board.

2
3 In response to a request from Chairman Roth on information about the council, Mr. Molinet
4 explained they are a group of volunteer residents who assist in emergency management,
5 helping the professionals and educating residents to prepare for emergency situations and
6 take care of themselves during these events. He further explained that Derry obtained a grant
7 to start the council which is composed of seven towns in the surrounding area. He stated that
8 the council helps concentrate resources to train with less money and provided some
9 examples. Selectman Barnes explained that the Citizen Corp Councils had been initiated by
10 the Department of Homeland Security and the additional educational component trains
11 citizens to be self sufficient for the first 72 hours of an emergency event, as it takes this long
12 before the professionals are ready to move in.

13
14 **MOTION:** by Selectman Barnes

15 *Move to appoint Fausto Molinet to represent the Town of Salem on the Greater Derry*
16 *Citizen Corps Council, and further to appoint Robert Dupre to serve as the alternate*
17 *representative to the Council.*

18 **SECOND:** Selectman McBride

19 **VOTE:** 5-0-0

20 The motion carried unanimously

21
22 **4. Appoint Museum Committee Member**

23 Mr. Sistare explained about the make up of the Committee and that it had been recommended
24 that Mrs. Beverly Glynn be appointed to the vacancy on the Museum Committee.

25
26 **MOTION:** by Selectman McBride

27 *Move to appoint Beverly Glynn as the Historic District Commission representative to the*
28 *Museum Committee with a term to expire April 2011.*

29 Chairman Roth commented that it is due to Mrs. Glynn that the train station project is
30 moving forward and she is honored to support this motion.

31 **SECOND:** Selectman Hargreaves

32 **VOTE:** 5-0-0

33 The motion carried unanimously.

34
35 Chairman Roth congratulated Mrs. Glynn on her appointment and thanked her for her years
36 of service to the Town.

37
38 **5. Director of Engineering**

39 **a) Use of Sewer Unreserved Fund Balance – Dawn Street Sewer**

40 Mr. Puff introduced himself, referring to a memo dated April 24, 2008 which the Board
41 had in their packets. He provided background on the project, and explained that bids had
42 come in a little higher than projected. He reported that the contract had been signed with
43 the top coat deleted from the scope and he had stated he would be coming back at a later
44 time to request funds for that separately, to be taken from the Unreserved Fund Balance.
45 He explained his request will facilitate installation and completion of the work.

Discussion:

Mr. Sistare informed Selectman Hargreaves that the balance in the fund at this time is just over \$600,000. Mr. Puff explained for Selectman Hargreaves why the work had not been completed last year. He stated he had wanted to wait until negotiations with the developer about them possibly contributing funds to the project were completed. It was clarified for Selectman Hargreaves that the Town will recover \$207,000 which will go back into the Sewer Fund. There followed a discussion about water rates, with Mr. Sistare stating he did not think annual rate adjustments were the way to go. Selectman McBride joined the discussion providing clarification and his opinion. It was pointed out there are an additional 98 users to Town sewer and the Town will collect more money for the fund from them. In response to a question from Chairman Roth, Mr. Puff stated he did not think there was anything that could have been done to foresee or avoid the shortfall in the bid process and he did not feel they need to make any correction procedurally.

MOTION: by Selectman McBride

Move to authorize the expenditure of a sum not to exceed \$38,000 from the Sewer Unreserved Fund Balance to cover costs associated with top course paving of the Dawn Street Sewer Project.

SECOND: Selectman Barnes

Discussion:

Selectman Hargreaves obtained confirmation that the Board of Selectmen is authorized to spend the money from the fund for this purpose.

VOTE: 4-0-1 (Selectman Hargreaves abstained)

The motion carried unanimously.

b) Capital Projects Update

Mr. Puff provided a brief overview of the current status as follows:

MaryAnn/Elsie – due to permitting issues the project was unable to be finished in 2007. The project went out to bid in January and the contractor has been working for a few weeks. It is anticipated that completion will be late August, but may be earlier. Mr. Puff stated he was encouraged by the number of bids they had received and the project is well under the Engineer's estimate.

Arterial road bond – Mr. Puff stated they had received six bids on the project and informed Selectman McBride that Busby Construction was the successful bidder. He also stated the first course was scheduled for August, with the top course possibly being put down in November.

Selectman Hargreaves reported he has received a request from a resident for a sign going north to warn of a bump in the road. It was agreed this would be addressed. Mr. Puff informed Selectman McBride that a decision will be made later in the year as to whether the binder coat has weathered enough for the top coat to be laid. There was further discussion on this topic.

1 Shore Drive – Mr. Puff reported they are still awaiting two permits from the DES, and he
2 is still talking to property owners regarding four or five rights of entry. He also stated
3 they are aiming for bids to open on May 29, 2008, explaining the process and time
4 involved and that they anticipate starting construction by July 4, 2008, with completion in
5 2008. Mr. Puff confirmed for Selectman Hargreaves that the final coat will most likely
6 be applied next year, but this is a judgment call. Selectman McBride thanked Mr. Puff's
7 department for the bridge work on North Main Street.
8

9 Haverhill Road – Mr. Puff reported there is currently an advert out for a recount on bids,
10 explaining they need to wait for the level of the Spickett River to go down and
11 construction will begin in June. He stated this project is scheduled for later summer or
12 early fall, but it should be completed relatively quickly.
13

14 Mr. Puff then proceeded to provide a summary of the status of work which began last
15 year. Linwood/Dawn will be wrapped up around Memorial Day. There are queries
16 regarding connection to Town sewer, and residents are being advised this will be
17 available in 2-3 weeks. He stated it is mostly top course work to be completed which was
18 deferred over the winter.
19

20 Mr. Puff announced they will be updating the current projects list under the Engineering
21 Department every two weeks on the Town web site.
22

23 Mr. Puff deferred to Mr. Scott who provided an update on the status of the drainage
24 inventory.
25

26 In response to a query from Selectman Lyons, Mr. Sistare stated the culvert cleaning is
27 currently out to bid. It was clarified for Selectman Barnes that the collapse of a culvert
28 falls under normal maintenance. Mr. Scott stated they would try to stay ahead of the
29 mosquito program with the culvert cleaning. Chairman Roth thanked Messrs. Puff and
30 Scott for their work.
31

32 6. FMAC Update

33 Mr. Sistare introduced Mr. Scott and Ms. Nancy Lavalley to provide an FMAC update. Mr.
34 Scott referred to a letter from Ms. Lavalley dated April 28, 2008 which outlined information
35 on an upcoming FMAC conference scheduled for May 15, 2008. He provided a synopsis of
36 the contents of the conference, and the guest speakers who would attend. He also provided
37 information on an informational brochure on FMAC being developed for residents and the
38 process involved in the FMAC project. Mr. Scott explained they are conducting an
39 awareness campaign for residents, providing information on what will need to be done for
40 the future. He explained the next steps in the CIP and the budget to move programs like
41 flood management forward. He then deferred to Ms. Lavalley, who thanked everyone for
42 their support in making the conference happen. She also thanked the Board of Selectmen for
43 their support and assistance. She encouraged residents and businesses affected by flooding to
44 attend the conference, stating they will have vendors lined up to talk to people who have
45 questions. She announced the conference is scheduled to take place on Thursday May 15,
46 2008 at 6:30 p.m. at the High School Media Center and will be open to the public. Ms.

1 Lavallee stated that Jennifer Gilbert from NH Office of Energy and Planning (OEP) will be
2 there to discuss flood insurance.
3

4 Mr. Scott provided details of items scheduled to be updated as part of the project, and
5 explained there is a procedure for closing items. Chairman Roth re-stated the conference
6 information for clarification, stating the agenda will be posted on the Town web site this
7 week and the brochure will be distributed in public venues. Mr. Scott stated there will also
8 be a direct mailing to residents, focusing on those who typically are flooded, and the
9 information will also appear on local cable TV and Town web site.
10

11 In response to a query from Selectman McBride about the status of FEMA grants, Mr. Sistare
12 reported they have been applied for and he was expecting receipt of the latest information in
13 early May.
14

15 Selectman McBride provided information regarding water savings and paper savings.
16

17 Chairman Roth thanked Mr. Scott for the time and effort he had spent on the FMAC project.
18

19 **7. Recommended Objective for Charter Reform Committee**

20 Selectman Lyons provided a Power Point presentation to the Board of Selectmen regarding
21 the objective for the Salem Charter Reform Committee (SCRC), explaining it is not a Charter
22 Study Commission, and asked the Press to make this point when they report on the
23 Committee. He also made the following points in his presentation:
24

- 25 • The Board has the authority to appoint a study committee to look at changes necessary to
26 the Town charter.
- 27 • Amendments to the Town charter can be proposed by the Board at a Town meeting
28 without forming a Charter Commission.
- 29 • The Board of Selectmen has the authority to ask for a Town meeting to make changes to
30 the charter.
- 31 • If the Board of Selectmen wants to form a Charter Commission it has the authority to ask
32 for it.
- 33 • The SCRC is a Committee formed by the Board of Selectmen for the purpose of advising
34 on making some of these decisions.
- 35 • The Board of Selectmen has no authority over what a Charter Reform Committee
36 recommends.
37

38 Regarding the authority of the Board of Selectmen, Selectman Lyons pointed out it is not
39 their intent to rush into a large decision as they wish to ensure they do their homework
40 correctly before any decisions are taken.
41

42 Selectman Lyons then clarified that the charge of the SCRC is to make minor changes to the
43 charter; clarify the Budget Committee role with precision; change the Town fiscal year;
44 change the Town bond passage criteria from two thirds to three fifths; make any other
45 changes allowed by the statute that do not require a Charter Commission.
46

1 Mr. Sistare clarified the definition of an "amendment" versus a "revision" to the charter, as
2 defined in RSA 49-B: 5, with Chairman Roth re-stating it for the record. Referring to the
3 Town fiscal year, Selectman McBride reported he has received requests from residents for
4 quarterly tax billing. Mr. Sistare pointed out people are at liberty to pay quarterly if they
5 wish. Selectman Hargreaves reported however that he had spoken to a resident who had tried
6 to pre-pay and was not permitted to do so, and Mr. Sistare stated he would look into the
7 matter.

8
9 Selectman Barnes stated for the record the definition of the RSA, which permits the Board of
10 Selectmen to appoint an advisory Committee as they see fit. Chairman Roth stated that local
11 municipalities have been provided with these tools to assist them in running their
12 municipalities and there followed a brief discussion.

13
14 Mr. Sistare re-stated the definition of a "revision" as in RSA 49B:3. Selectman McBride
15 pointed out that the Town pays the LGC for guidance rather than paying attorneys higher
16 fees for the same advice, and Selectman Hargreaves pointed out that the charge of the SCRC
17 includes making recommendations to ensure the Budget Committee can function.

18
19 At the request of Chairman Roth, Selectman Barnes provided a report on the status of the
20 State statute. He explained the process, pointing out that it would appear the issue relating to
21 the Salem Budget Committee will be taken care of in Concord. Chairman Roth spoke about
22 making the language of the Town charter more comprehensive. There followed a brief
23 discussion. Mr. Sistare provided an update on the call for residents and candidates to be
24 appointed to SCRC, and Chairman Roth made a request for volunteers to serve on the
25 Committee. She thanked Selectman Lyons for bringing the matter forward and for his work
26 on the subject. She then recommended a motion be made that the SCRC be charged with
27 looking at the items presented by Selectman Lyons.

28
29 Selectman Lyons highlighted a report deadline of September 28, 2008 for the Committee to
30 report back to the Board of Selectmen with their recommendations. There followed a brief
31 discussion on the details of the terms under which the Committee would operate.

32
33 **MOTION:** by Selectman McBride

34 *Move that the Salem Board of Selectmen charge the Salem Charter Reform Committee*
35 *(SCRC) as written in the proposal presented to the Board on April 28, 2008 by Selectman*
36 *Lyons, that the final report from the SCRC be made to the Board of Selectmen no later*
37 *than September 22, 2008, and that the SCRC be dissolved on September 23, 2008.*

38 **SECOND:** Selectman Hargreaves

39
40 **Discussion:**

41 Mr. Sistare clarified the two ways in which a charter can be revised. There followed a
42 discussion between members of the Board and Mr. Sistare on the subject

43
44 **VOTE:** 5-0-0

45 The motion carried unanimously.
46

1 As the chairman of the Board of Selectmen, Chairman Roth then named Selectman Lyons as
2 her designee to the SCRC and Selectman Lyons accepted.
3

4 **8. Town Manager's Report**

5 Mr. Sistare provided an update on a letter from the DES regarding the Salem water supply,
6 highlighting the areas of concern for the DES. There followed a discussion in which
7 Selectman McBride suggested Mr. Sistare talk to Attorney Gordon Graham as he has the
8 most knowledge on the water supply issues.
9

10 **9. Selectmen Reports/Correspondence**

11 Selectman McBride provided his opinion that he considered a letter received from the LGC
12 the final answer on the issue of encumbrances.
13

14 In response to Selectman McBride, Mr. Sistare provided a status report on the issues raised at
15 a previous meeting regarding the Lancaster fund. There followed a discussion in which it
16 was pointed out that an audit of the trust fund is under way with the support of the trustees.
17 Chairman Roth pointed out that Selectman Barnes is looking at putting a policy together for
18 the Board of Selectmen on how they look at the fund, and Selectman McBride stated he
19 would like to get the matter resolved as quickly as possible.
20

21 Selectman Barnes raised a question relating to attorney client privilege and the Board of
22 Selectmen. There followed a discussion, with Mr. Sistare explaining the Town as the client
23 has the right to share information with whom they choose, but that does not make the
24 information a public document. Chairman Roth explained the Board of Selectmen is bound
25 to keep information confidential.
26

27 Mr. Sistare provided clarification to Selectman Hargreaves on how to proceed with things
28 which were voted down at a Town meeting.
29

30 In response to some phone calls Selectman Hargreaves had received, he announced the cost
31 of police uniforms which had been purchased, and where the money to pay for them came
32 from. He also clarified the cost of painting police cruisers and where the money would come
33 from to pay for this.
34

35 Selectman McBride raised the issue of the State's intent to impose a tax on Texas Holdems.
36 There followed a discussion with the Board members voicing their opinion about the
37 proposed tax and its effect on charities.
38

39 **MOTION:** by Selectman McBride

40 *Move that the Board of Selectmen authorize the Town Manager to send a letter to the State*
41 *opposing the tax on Texas Holdem tournaments*

42 **SECOND:** Selectman Lyons

43 Chairman Roth stated that she had heard from a number of non profit boards concerned about
44 this tax, as it will result in a significant loss of revenue source for a lot of community
45 projects. Mr. Sistare sought to clarify the Board's intent in sending the letter, to ensure the
46 Town is taking a consistent approach. There followed a discussion with the Board members

1 voicing their opinion about the content of the letter to the Senate and the wording of the
2 motion. The members also discussed the difference between the tax under discussion and the
3 one which is imposed on video gaming.
4

5 **VOTE:** 2-3-0

6 The motion failed, with Selectman McBride and Selectman Barnes voting for the motion.
7

8 **MOTION:** by Selectman Lyons

9 *Move that the Board of Selectmen authorize the Town Manager to send a letter to the State*
10 *no later than tomorrow, requesting that the proposed bill on taxing Texas Holdems needs*
11 *to be considered carefully as to its effects on local charities and the local Salem community*
12 *at large.*

13 **SECOND:** Selectman Hargreaves

14 **VOTE:** 4-1-0

15 The motion carried with Selectman McBride opposing it.
16

17 Selectman Hargreaves reported he has found a company willing to make wheels for the
18 Town cannon and he provided details to Selectman Barnes.
19

20 Selectman Hargreaves requested an update on the status of a previous discussion relating to
21 signs for the Transfer Station encouraging residents to recycle. Chairman Roth stated the
22 Town will be doing a more comprehensive recycling program which will address the signs.
23

24 Selectman Hargreaves reported on the Field of Dreams clean up, stating that lists of items
25 required by the Field of Dreams will be put on Town bulletin boards. He also provided an
26 update on the skate park.
27

28 **10. Old Business Tabled/Pending**

29 There was none.
30

31 • **Additions/Requests by the Public**

32 There were none.
33

34 • **Upcoming Meetings**

- 35 ○ May 5, 2008
- 36 ○ May 9, 2008 – Board of Selectmen Retreat being considered (further information to
37 follow at the next meeting)
- 38 ○ May 12, 2008
- 39 ○ May 19, 2008
40

41 Referring to an article in the newspaper on the Town Manager's Assistant, Mrs. Maureen Witley,
42 Chairman Roth publicly thanked Mrs. Witley for her service to the Town.
43

44 • **Upcoming Events**

45 As mentioned earlier in the meeting.
46

1 **MOTION:** by Selectman Lyons

2 *To adjourn the meeting*

3 **SECOND:** Selectman Hargreaves

4 **VOTE:** 5-0-0

5 The motion carried unanimously.

6
7 Without further business, the meeting adjourned at 9:10 p. m.

8
9 Notes/Minutes Taken by: Sandra Maxwell

10
11 Approved: Board of Selectmen

12
13 Date: June 2, 2008

EXHIBIT B

Minutes of May 12, 2008
Board of Selectmen Meeting

MINUTES OF THE BOARD OF SELECTMEN

MEETING OF
May 12, 2008

The Board of Selectmen held a meeting on Monday, May 12, 2008, the Salem Town Hall, 33 Geremonty Drive, Salem, New Hampshire.

PRESENT: Chairman Elizabeth A. Roth, Vice-Chairman Arthur E. Barnes, III, Secretary, Michael J. Lyons, Selectman Everett P. McBride, Jr., Selectman Patrick M. Hargreaves, Secretary, and Town Manager, Jonathan Sistare.

CALL TO ORDER

Chairman Roth called the meeting to order at 7:00PM with the Pledge of Allegiance. Chairman Roth then introduced the Board members and Town Manager Jonathan Sistare.

1. Meeting Minutes

There were no minutes available for approval at this time.

2. Chairman Comments

Chairman Roth commented that the planning session on May 9, 2008 was very effective and the topics of roads, fuel, etc. were discussed. She further commented that what evolved was that the sense of Salem, New Hampshire should again be considered the gateway to New Hampshire, and added that it was the consensus of the Board that they would like to recapture the time when Salem, New Hampshire was considered the gateway of new businesses and civic pride.

3. Appoint Representatives to Salem Charter Reform Commission

Chairman Roth indicated that the Board of Selectmen had appointed the following individuals as members of the Salem Charter Reform Commission, and thanked all the applicants.

Laurence Belair
Russell E. Frydryck
Daniel J. Norris
Barbara Lessard, Alternate

Chairman Roth announced the other members as Michael Carney from the Budget Committee, Brian Keaveny from the CIP, Pam Berry from the School Board and Mike Lyons from the Board of Selectmen.

MOTION: by Selectman Lyons

1 *Motion that the Board of Selectmen due hereby appoint the following individuals to the Salem*
2 *Reform Charter Commission, Laurence Belair, Russell E. Frydryck, Daniel J. Norris,*
3 *Barbara Lessard, Alternate on this 12th day of May, 2008.*

4
5 **SECOND: by Selectman McBride**

6 **VOTE: 5-0-0**

7 The motion carried unanimously.

8
9 Selectman Lyons stated that materials would be available for pickup by May 19th, and added that
10 the first meeting would be held May 22, 2008. He also stated that the final report would be
11 presented to Board of Selectmen by September 22nd.

12
13 **4. Review Investment Policy**

14
15 John Sytek introduced himself and commented that as far as the investment policy was
16 concerned, there was not much in the line of changes. He commented further that he used an
17 outside expert and Ms. Savastano to help review the policies. He further stated that we could not
18 risk money, must pay bills weekly, and lastly determine how we could be clever within the
19 parameters, which were restricted by state law. Mr. Sytek noted that all monies in NH were
20 collateralized, besides trust funds. Mr. Sytek commented further that we used to let the banks
21 sweep accounts and invest in overnights when excess funds are available, now the money is
22 placed in seven day CD's. Mr. Sytek stated that this had saved the Town the approximate value
23 of taxes for forty homes.

24
25 **MOTION: by Selectman McBride**

26 *Motion that the Board of Selectmen due hereby adopt the Town of Salem, Investment Policy,*
27 *as prepared by Town treasurer John Sytek on this 12th day of May, 2008.*

28
29 **SECOND: by Selectman Hargreaves**

30 **VOTE: 5-0-0**

31 The motion carried unanimously.

32
33 Jonathan Sistare commented that the Town might have to issue some TANS, and asked her to
34 step to the podium to address any questions.

35
36 Ms. Savastano commented that cash was reviewed on a weekly basis, and added that it had
37 dipped lower than anticipated, which may result in going out for TANS very soon.

38
39 Chairman Roth explained that TANS was a line of credit up to certain dollar value and added
40 that interest would not be charged until/unless money was borrowed.

41
42 Selectman Hargreaves asked if we planned on taking out any TANS. Ms. Savastano replied that
43 we would be applying for approximately \$4.0 million. Selectman Hargreaves asked if we would
44 shop around for the best interest rate. Ms. Savastano stated that she was planning on using
45 Citizens Bank. Selectman Hargreaves suggested that we investigate other options.

1 Chairman Roth referenced the interest rate for the TANS as 2-3% and asked if we could get a
2 lower interest rate, and if we were definitely taking out TANS. Ms. Savastano replied we would
3 be taking out TANS, as we owe the School District money every few weeks. Chairman Roth
4 asked that the Selectmen be notified when this action was taken.
5

6 Selectman Lyons referenced the surplus policy of 5-6%, and asked where we were. Jonathan
7 Sistare replied that the fund balance at the end of the year was 6%. Selectman Lyons commented
8 that if we wanted to be non-TAN we would be at a significantly higher rate.
9

10 **Community Development Director**

11 **A. Depot Intersection Project Update**

12 Mr. Bill Scott, Community Development Director introduced the Depot Intersection Project and
13 presented information gathered from the abutters. He highlighted the connection between the
14 ITS and SE-Trip programs and stated that the focus was between technology, transit and
15 capacity.
16
17

18 He then introduced Marty Kennedy of GHB, which was located in Bedford, NH, who was
19 heading the project. Mr. Kennedy commented that their company provided full transportation
20 and land environmental services, and also touched on projects completed in Vermont and
21 Jaffrey, NH. He commented further that the purpose was to establish a community vision, and
22 revitalization plan with land use and traffic improvements, focusing on building consensus.
23
24

25 Marty Kennedy commented on the traffic flow and peak periods, and showed a graphic of what
26 the alternative traffic routes/plans may look like.
27

28 Chairman Roth asked if this data could be shown in real time to get a good idea of what was
29 happening. Selectman Hargreaves asked if the graphic displayed was showing the current
30 volume. Mr. Kennedy stated that it was showing current volume. Selectman Hargreaves
31 commented that it did not seem accurate. Mr. Kennedy commented that a meeting had been held
32 at Devito's on April 17, 2008 with the business owners and discussed the following: who should
33 take the lead, approach, priorities, solutions, timing and phasing aspects of the project.
34

35 Mr. Kennedy outlined the concerns of the residents, business owners and stated that the traffic
36 solution would be treating the Depot as a larger area, and also added that this would be a phased
37 project that would contain an economic plan and a partnership effort.
38

39 Chairman Roth asked what the overall schedule was. Mr. Kennedy replied that there would be
40 three phases, 1) existing condition, 2) alternative valuation, and 3) ultimate recommended plan.
41

42 Bill Scott stated that some property owners were in attendance and asked if there were any
43 questions and/or comments.
44

45 Chairman Roth indicated that a member of the public wished to speak and asked them to come to
46 the podium.

1 Ed Callahan of Rockingham Park, stated that he found this session to be informative, and stated
2 further that he had a hopeful attitude, noting that this was the first time input had been asked for.
3 He added that it seemed like this project was trying to be moved forward.

4
5 Selectman Hargreaves thanked the staff for the presentation and asked how it would be possible,
6 if at all to test the actual lights that would be implemented in phase two. Mr. Kennedy stated that
7 this could absolutely be done. Selectman Lyons asked if this plan fit into the context with the
8 plan that the State had developed. Mr. Bill Scott replied that it did fit within the context and also
9 addressed a broader solution. Selectman Lyons commented that he was in favor of economic
10 development. Mr. Bill Scott commented that the State knows about the study, adding that it fits
11 the new D.O.T model of design. Selectman Lyons commented that it seemed like the State was
12 still committed to solving the traffic problem, but had changed the approach. Mr. Bill Scott
13 stated that we were following the guidelines, adding that the State would accept the outcome,
14 and therefore we would qualify for funds. Selectman Lyons asked if the acquisition strategy was
15 still valid, or if it was on hold. Mr. Bill Scott stated that we would be taking a fresh look at it.

16
17 Selectman McBride asked if this plan conflicted with the State's plan. Mr. Bill Scott commented
18 no, and added that we were not relying on the State plan to solve traffic issues. Selectman
19 McBride stated that alternative traffic solutions/routes should be sought, adding that he does not
20 want to see an eight lane highway through the Depot. Mr. Bill Scott replied that all avenues
21 would be explored.

22
23 Chairman Roth commented that she had attended the meeting in April, and added that if people
24 were psychologically invested that they would become involved as this was a unique and
25 worthwhile approach to take to get more people involved.

26
27 Selectman Barnes asked how close the matrix was to the item being shown on the graphic for
28 redevelopment. Mr. Bill Scott, replied that it was close to what was notified, going as far back as
29 needed, stimulating redevelopment and moving traffic out of the Depot. Selectman Barnes
30 commented that further down Broadway a lot of businesses were owned by corporations that
31 were headquartered elsewhere in the world, and asked if this area would be affected as you travel
32 further north. Mr. Bill Scott stated that we would not be addressing that area.

33
34 Selectman McBride pointed out that we could have thousands of cars travelling by businesses,
35 but added that if they were not stopping it would not be valuable. Chairman Roth commented
36 that the awareness was there, adding that this issue had been discussed at the April meeting.
37 Selectman Lyons asked if the redevelopment would be done in terms of quadrants. Mr. Bill Scott
38 commented that they were looking at the through-fare and back into the property.

39
40 Selectman Hargreaves stated that he wanted to see expansion, and added that we should make
41 sure we have enough lanes as he did not want this issue to be re-visited in five years. Mr. Scott
42 stated that the entire traffic system in this area was being looked at, not just the Rockingham
43 Park area.

44
45 Selectman McBride added that Wal-Mart did contribute to the Trust Fund and added that they
46 continue to contribute.

1 Selectman Lyons commented that he was all for redevelopment and the Depot revitalization, but
2 added that if we think in terms of quadrants, it may be part of the problem from an economic
3 point of view because with traffic we cannot compromise a lot. He added that we should educate
4 the public and consider the following: bonuses, height, density, and parking. He added that these
5 were zoned Commercial A properties. Selectman McBride commented that he hoped that we
6 would meet with the Planning Board and Zoning Board of Adjustment to keep them informed.
7 Mr. Bill Scott stated that this would be done, adding also that we do not want to develop beyond
8 the capacity of the road that is designed.

9
10 Chairman Roth stated that having this presentation was very helpful allowing for a level playing
11 field, and added that informed decisions could be made.

12
13 Mr. Bill Scott stated that he would be announcing future meetings, which would include the
14 boards and the public.

15
16 *Chairman Roth stepped down, at 8:22PM. Selectman Barnes took over as the chairperson.*

17
18 *Selectman Hargreaves made a motion for a ten-minute recess at 8:23PM*

19
20 *Chairman Roth called the meeting back to order at 8:33PM*

21
22 Chairman Roth allowed a final comment by the public.

23
24 Larry Belair commented that he had a business on Route 28 and stated that he was pleased to see
25 that the Depot was being worked on. He commented further that traffic was always a problem,
26 and asked that we be serious with our intentions with respect to the Depot. He suggested that we
27 create character for the Town of Salem by having sidewalk requirements, plantings, good
28 appearance, and asked that the community be pro-active. He further commented that this is the
29 time to develop some standards for this area.

30
31 Chairman Roth stated that we should look at the big picture and look at enhancements that would
32 uplift businesses.

33
34 Mr. Bill Scott stated that these were very good points and added that an abutters group had been
35 created, as well as a formal process for review. He added that in order to create uniformity, the
36 boards would be involved in the process. He also stated that GHB had significant experience
37 with these types of projects. Chairman Roth stated that this vision was in line with the vision that
38 the Selectmen had discussed at their retreat with Salem being a gateway to NH.

39
40 **B. Bicycle Pedestrian Corridor Update**

41
42 Mr. Bill Scott, Community Development Director introduced the Bicycle/Pedestrian Corridor
43 Project and presented status information and recommendations developed by the committee to
44 date.

1 Mr. Bill Scott introduced Greg Bakos, of GHB, who informed the Board of his background and
2 stated that they were in the early stages of this project, which was focused on a 5-mile corridor,
3 which had been divided into four key sections based on topography of the land. He identified
4 each section and its unique qualities and challenges. He noted that allowed uses include non-
5 motorized modes as well as wheelchairs, emergency vehicles, and maintenance vehicles. He
6 added that the trails would be 10-foot wide minimum, wetland impact, drainage, guardrail and
7 crosswalk issues would all be addressed. He added that multi-module opportunities would be
8 sought.

9
10 Mr. Bill Scott commented in closing that specific types of meetings would be held to determine
11 specific goals and to finalize the approach which would be taken, addressing specific issues such
12 as crosswalks, sidewalks, wetlands, etc.

13
14 **Questions:**

15 Selectman Hargreaves asked to see a picture of what the bridge over the Rockingham Boulevard
16 would possibly look like and asked if it was feasible. Selectman McBride commented that
17 listening to the abutters was good thing.

18
19 **5. Town Manager's Report**

20
21 Jonathan Sistare introduced Mr. Bill Scott who presented an update on EDAC. He commented
22 that the key was creating economic representation within the government process with the
23 following being important aspects: filling vacant spaces, creating economic and business
24 opportunities, and marketing to the community. He stated that the next item to be addressed
25 would be the call for candidates.

26
27 Chairman Roth stated that they have had a meeting with Jonathan Sistare, and are looking for
28 members to be ambassadors, to bring in more business, and to look at vacancies of existing
29 structures that we have. She stated further that she expected to have an organizational meeting
30 within the next couple of weeks.

31
32 Mr. Bill Scott commented that he would come back to Board with candidates etc.

33
34 Selectman McBride asked Mr. Bill Scott to address the upcoming FMAC meeting on May 15,
35 2008, being held from 6:30–8:30 at the Media Center. Mr. Scott announced that someone from
36 the Office of Energy and Planning would be in attendance as well as various department heads.

37
38 Jonathan Sistare commented that there was nothing wrong with the Town using TANS, adding
39 that we were just short on cash, and this does not mean there are any financial problems with the
40 Town. Selectman McBride stated that this was a short term issue, and commented that the last
41 time we used TANS was approximately ten years ago.

42
43 Jonathan Sistare commented on the Selectmen's Retreat and stated that he appreciated time and
44 effort put forth.

Jonathan Sistare commented that the legislative session was about to end, adding that the changes adopted by the Senate Committee were again reviewed by the House, and asked that the Board send another letter asking the committee to stick to the original House Bill 1645. He stated that we did not know the impact but added the cost to Salem would be an additional \$28,000.00 and without the House Bill passage the cost would be \$745,000.00. Chairman Roth commented that the Senate Committee made unanimous recommendations to the floor and asked if we knew the percentage by which this passed. Jonathan Sistare commented that he did not, and added that the actual cost to Salem would be substantially more than the \$28,000.00

Selectman Hargreaves commented that Senator Downing was on the committee, he voted against the recommendation which passed 6-0 to go to Senate floor, and added that he voted for changes before he got the letter. Mr. Sistare commented that Senator Downing made slight changes to COLA.

Jonathan Sistare asked that the Board send a letter to the House. The Selectmen agreed unanimously.

Jonathan Sistare referenced a labor bill requiring that the evergreen clause be placed in every collective bargaining agreement, which essentially takes away the bargaining tools that the employer had, and he asked the Board to send a letter in opposition.

Selectman McBride agrees and asked further if this meant that employees would receive automatic raises. Jonathan Sistare commented that this was a sticking point, as it did not specify what the pay plan would include. He also stated that the LGC was concerned about the interpretation.

Jonathan Sistare announced that the Police Memorial Ceremony would be held this Wednesday at 11:30 am. Chairman Roth commented that this would be held at the Cemetery and stated that she would be unable to attend. Selectman Barnes commented that he would be attending and reading the proclamation. Selectman Hargreaves indicated he would also be in attendance.

Chairman Roth added that the public felt that the new Town Manager was doing a very good job, and wanted to relay that point publicly.

6. Selectmen Reports/Correspondence

RECONSIDERATION MOTION: by Selectman Lyons

Motion that the Board of Selectmen reconsider the charges made regarding the following individuals to the Salem Reform Charter Commission, Laurence Belair, Russell E. Frydryck, Daniel J. Norris, and Barbara Lessard, Alternate on this 12th day of May, 2008.

SECOND: by Selectman McBride

VOTE: 5-0-0

The motion carried unanimously.

MOTION: by Selectman Lyons

1 *Motion that the Board of Selectmen appoint the following individuals to the Salem Reform*
2 *Charter Commission, Laurence Belair, Alternate, Russell E. Frydryck, Daniel J. Norris, and*
3 *Barbara Lessard, as regular members on this 12th day of May, 2008.*

4
5 **SECOND: by Selectman McBride**

6 **VOTE: 4-1**, in the minority Selectman Hargreaves
7 The motion carried unanimously.

8
9 Selectman Barnes commented that he had been in touch with John Sununu's Office, as he was
10 trying to locate a more modern type of military hardware, adding that it had been brought to his
11 attention that a Howitzer might be available. He added that they had not been in contact yet due
12 to scheduling issues.

13
14 Chairman Roth asked what a Howitzer was and the approximate size if it compared to the
15 cannon. Selectman Hargreaves explained what a Howitzer was and added that was
16 approximately 22 feet long and 6-8 feet high.

17
18 Selectman Hargreaves suggested that the rebuilding/repairing of the cannon could be an Eagle
19 Scout project.

20
21 Selectman Hargreaves asked that the Town Manager reserve a spot in next week's Monday
22 meeting for a skate park presentation.

23
24 Selectman Hargreaves stated that he received a call from a resident and that had asked if the
25 water meter reading on the building was different from the inside reading, if the Town would
26 replace this or what would happen. Jonathan Sistare commented that the Town was conducting a
27 water meter validation study, and added that he would look into what the policy and procedure
28 was, and asked that Selectman Hargreaves provide him with the resident information.

29
30 Selectman McBride stated that the Memorial Day Parade was May 26, 2008, adding that
31 members should meet at the High School at 1:30PM and that the parade would kick off at
32 2:00PM

33
34 Chairman Roth commented that a fundraiser was being held on May 29, 2008 for the Train
35 Station refurbishing, adding that public and private fund would be accepted.

36
37 **7. Old Business Tabled/Pending**

38
39 • **Additions and/or Requests by Public or Board by Vote**

40
41 • **UPCOMING MEETINGS**

- 42
43 ○ May 19, 2008
44 ○ June 2, 2008
45 ○ June 9, 2008
46 ○ June 23, 2008

1 **MOTION: by Selectman Hargreaves**

2 *To adjourn the meeting*

3 **SECOND: Selectman McBride**

4 **VOTE: 5-0-0**

5 The motion carried unanimously

6
7 **Without further business, the meeting adjourned at 9:28 PM.**

8
9 Notes/Minutes Taken by: Catherine Kupa, Recording Secretary

10
11 Approved: Board of Selectmen

12
13 Date: June 2, 2008

EXHIBIT C

RSA 32, RSA 49-B, and RSA 49-D

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 32

MUNICIPAL BUDGET LAW

Section 32:1

32:1 Statement of Purpose. – The purpose of this chapter is to clarify the law as it existed under former RSA 32. A town or district may establish a municipal budget committee to assist its voters in the prudent appropriation of public funds. The budget committee, in those municipalities which establish one, is intended to have budgetary authority analogous to that of a legislative appropriations committee. It is the legislature's further purpose to establish uniformity in the manner of appropriating and spending public funds in all municipal subdivisions to which this chapter applies, including those towns, school districts and village districts which do not operate with budget committees, and have not before had much statutory guidance.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:2

32:2 Application. – RSA 32:1-13, shall apply to all towns, school districts, cooperative school districts, village districts, and any other municipal entities, including those created pursuant to RSA 53-A or 53-B, which adopt their budgets at an annual meeting of their voters. RSA 32:14-23, concerning budget committees, shall apply only in those towns or districts adopting that subdivision pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that subdivision.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:3

32:3 Definitions. – In this chapter:

I. "'Appropriate' means to set apart from the public revenue of a municipality a certain sum for a specified purpose and to authorize the expenditure of that sum for that purpose.

II. "'Appropriation' means an amount of money appropriated for a specified purpose by the legislative body.

III. "'Budget' means a statement of recommended appropriations and anticipated revenues submitted to the legislative body by the budget committee, or the governing body if there is no budget committee, as an attachment to, and as part of the warrant for, an annual or special meeting.

IV. "'District' includes a school district, cooperative school district, village district, or district created pursuant to RSA 53-A or 53-B.

V. "'Purpose' means a goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant, or form submitted to the department of revenue administration,

or an appropriation contained in a special warrant article, shall be considered a single "purpose."

VI. "Special warrant article" means any article in the warrant for an annual or special meeting which proposes an appropriation by the meeting and which:

- (a) Is submitted by petition; or
- (b) Calls for an appropriation of an amount to be raised by the issuance of bonds or notes pursuant to RSA 33; or
- (c) Calls for an appropriation to a separate fund created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or trust fund under RSA 31:19-a; or
- (d) Is designated in the warrant, by the governing body, as a special warrant article, or as a nonlapsing or nontransferable appropriation.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:1, eff. Aug. 9, 1996. 2003, 95:1, eff. Aug. 5, 2003.

Preparation of Budgets

Section 32:4

32:4 Estimate of Expenditures and Revenues. – All municipal officers, administrative officials and department heads, including officers of such self-sustaining departments as water, sewer, and electric departments, shall prepare statements of estimated expenditures and revenues for the ensuing fiscal year, and shall submit such statements to their respective governing bodies, at such times and in such detail as the governing body may require.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:5

32:5 Budget Preparation. –

I. The governing body, or the budget committee if there is one, shall hold at least one public hearing on each budget, not later than 25 days before each annual or special meeting, public notice of which shall be given at least 7 days in advance, and after the conclusion of public testimony shall finalize the budget to be submitted to the legislative body. Public hearings on bonds and notes in excess of \$100,000 shall be held in accordance with RSA 33:8-a, I. Days shall be counted in accordance with RSA 21:35.

II. All purposes and amounts of appropriations to be included in the budget or special warrant articles shall be disclosed or discussed at the final hearing. The governing body or budget committee shall not thereafter insert, in any budget column or special warrant article, an additional amount or purpose of appropriation which was not disclosed or discussed at that hearing, without first holding one or more public hearings on supplemental budget requests for town or district expenditures.

III. All appropriations recommended shall be stipulated on a "gross" basis, showing anticipated revenues from all sources, including grants, gifts, bequests, and bond issues, which shall be shown as offsetting revenues to appropriations affected. The budget shall be prepared according to rules adopted by the commissioner of revenue administration under RSA 541-A, relative to the required forms and information to be submitted for recommended appropriations and anticipated revenues for each town or district.

IV. Budget forms for the annual meeting shall include, in the section showing recommended appropriations, comparative columns indicating at least the following information:

- (a) Appropriations voted by the previous annual meeting.
- (b) Actual expenditures made pursuant to those appropriations, or in those towns and districts which hold annual meetings prior to the close of the current fiscal year, actual expenditures for the most recently completed fiscal year.

(c) All appropriations, including appropriations contained in special warrant articles, recommended by the governing body.

(d) If there is a budget committee, all the appropriations, including appropriations contained in special warrant articles, recommended by the budget committee.

V. When any purpose of appropriation, submitted by a governing body or by petition, appears in the warrant as part of a special warrant article:

(a) The article shall contain a notation of whether or not that appropriation is recommended by the governing body, and, if there is a budget committee, a notation of whether or not it is recommended by the budget committee;

(b) If the article is amended at the first session of the meeting in an official ballot referendum municipality, the governing body and the budget committee, if one exists, may revise its recommendation on the amended version of the special warrant article and the revised recommendation shall appear on the ballot for the second session of the meeting provided, however, that the 10 percent limitation on expenditures provided for in RSA 32:18 shall be calculated based upon the initial recommendations of the budget committee;

(c) Defects or deficiencies in these notations shall not affect the legal validity of any appropriation otherwise lawfully made; and

(d) All appropriations made under special warrant articles shall be subject to the hearing requirements of paragraphs I and II of this section.

V-a. Any town may vote to require that all votes by an advisory budget committee, a town budget committee, and the governing body or, in towns without a budget committee, all votes of the governing body relative to budget items or warrant articles shall be recorded votes and the numerical tally of any such vote shall be printed in the town warrant next to the affected warrant article.

VI. Upon completion of the budgets, an original of each budget and of each recommendation upon special warrant articles, signed by a quorum of the governing body, or of the budget committee, if any, shall be placed on file with the town or district clerk. A certified copy shall be forwarded by the chair of the budget committee, if any, or otherwise by the chair of the governing body, to the commissioner of revenue administration pursuant to RSA 21-J:34.

VII. (a) The governing body shall post certified copies of the budget with the warrant for the meeting. The operating budget warrant article shall contain the amount as recommended by the budget committee if there is one. In the case of towns, the budget shall also be printed in the town report made available to the legislative body at least one week before the date of the annual meeting. A school district or village district may vote, under an article inserted in the warrant, to require the district to print its budget in an annual report made available to the district's voters at least one week before the date of the annual meeting. Such district report may be separate or may be combined with the annual report of the town or towns within which the district is located.

(b) The governing body in official ballot referenda jurisdictions operating under RSA 40:13 shall post certified copies of the default budget form or any amended default budget form with the proposed operating budget and the warrant.

VIII. The procedural requirements of this section shall apply to any special meeting called to raise or appropriate funds, or to reduce or rescind any appropriation previously made, provided, however, that any budget form used may be prepared locally. Such a form or the applicable warrant article shall, at a minimum, show the request by the governing body or petitioners, the recommendation of the budget committee, if any, and the sources of anticipated offsetting revenue, other than taxes, if any.

IX. If the budget committee fails to deliver a budget prepared in accordance with this section, the governing body shall post its proposed budget with a notarized statement indicating that the budget is being posted pursuant to this paragraph in lieu of the budget committee's proposed budget. This alternative budget shall then be the basis for the application of the provisions of this chapter.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:2, eff. Aug. 9, 1996. 1997, 41:1, eff. July 11, 1997. 2001, 71:2, eff. July 1, 2001. 2002, 61:1, eff. June 25, 2002. 2004, 68:1, eff. July 6, 2004; 219:2, eff.

Aug. 10, 2004; 238:5, eff. June 15, 2004; 238:12, eff. Aug. 10, 2004 at 12:01 a.m. 2007, 305:1, eff. Sept. 11, 2007.

Section 32:5-a

32:5-a Presentation of Negotiated Cost Items at the Annual Meeting. – Cost items, as defined under RSA 273-A:1, IV, shall be presented to the annual town or district meeting in accordance with the procedures established under RSA 32:5. For submission to the legislative body of the annual meeting, cost items must be finalized by the date prescribed in RSA 39:3 for towns and by the date prescribed in RSA 197:6 for school districts. Cost items not negotiated in time to meet these dates may be submitted to the legislative body pursuant to the provisions of RSA 31:5 for towns and RSA 197:3 for school districts.

Source. 1996, 214:3, eff. Aug. 9, 1996.

Appropriations

Section 32:6

32:6 Appropriations Only at Annual or Special Meeting. – All appropriations in municipalities subject to this chapter shall be made by vote of the legislative body of the municipality at an annual or special meeting. No such meeting shall appropriate any money for any purpose unless that purpose appears in the budget or in a special warrant article, provided, however, that the legislative body may vote to appropriate more than, or less than, the amount recommended for such purpose in the budget or warrant, except as provided in RSA 32:18, unless the municipality has voted to override the 10 percent limitation as provided in RSA 32:18-a.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2000, 193:2, eff. July 29, 2000.

Section 32:6-a

32:6-a Continuation of Grant-Funded Programs. – [Repealed by 2004, 232:1, eff. June 11, 2004.]

Section 32:7

32:7 Lapse of Appropriations. – Annual meeting appropriations shall cover anticipated expenditures for one fiscal year. All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, unless:

I. The amount has, prior to the end of that fiscal year, become encumbered by a legally-enforceable obligation, created by contract or otherwise, to any person for the expenditure of that amount; or

II. The amount is legally placed in any nonlapsing fund properly created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or a town-created trust fund under RSA 31:19-a; or

III. The amount is to be raised, in whole or in part, through the issuance of bonds or notes pursuant to RSA 33, in which case the appropriation, unless rescinded, shall not lapse until the fulfillment of the purpose or completion of the project being financed by the bonds or notes; or

IV. The amount is appropriated from moneys anticipated to be received from a state, federal or other governmental or private grant, in which case the appropriation shall remain nonlapsing for as long as the money remains available under the rules or practice of the granting entity; or

V. The amount is appropriated under a special warrant article, in which case the local governing body may, at any properly noticed meeting held prior to the end of the fiscal year for which the appropriation is made, vote to treat that appropriation as encumbered for a maximum of one additional fiscal year; or

VI. The amount is appropriated under a special warrant article and is explicitly designated in the article and by vote of the meeting as nonlapsing, in which case the meeting shall designate the time at which the appropriation shall lapse, which in no case shall be later than 5 years after the end of the fiscal year for which the appropriation is made.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Expenditures

Section 32:8

32:8 Limitation on Expenditures. – No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:9

32:9 Exception. – Money may be spent to pay a judgment against the town or district, without an appropriation.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:10

32:10 Transfer of Appropriations. –

I. If changes arise during the year following the annual meeting that make it necessary to expend more than the amount appropriated for a specific purpose, the governing body may transfer to that appropriation an unexpended balance remaining in some other appropriation, provided, however, that:

(a) The total amount spent shall not exceed the total amount appropriated at the town or district meeting.

(b) Records shall be kept by the governing body, such that the budget committee, if any, or any citizen requesting such records pursuant to RSA 91-A:4, may ascertain the purposes of appropriations to which, and from which, amounts have been transferred; provided, however, that neither the budget committee nor other citizens shall have any authority to dispute or challenge the discretion of the governing body in making such transfers.

(c) A statement comparing all legislative body appropriations against all expenditures shall be deemed adequate for purposes of the records required by subparagraph (b), so long as every expenditure has been properly authorized and properly classified and entered and any expenditures exceeding the original legislative appropriations are offset by unexpended balances remaining in other appropriations, in which case the governing body shall not be required to designate the specific source of each transfer.

(d) Any amount appropriated at the meeting under a special warrant article may be used only for the purpose specified in that article and shall not be transferred.

(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero or does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose.

II. As used in RSA 32:10, I(a)-(d), concerning transfers of appropriations and records thereof, "purpose" refers, in addition to its meaning in RSA 32:3, V, to individual line items in whatever detailed budget or chart of accounts is regularly used by the municipality. The general wording of a vote adopting a budget or portion of a budget shall not be considered a "purpose" to which an amount may be transferred. The definition of "purpose" as used in RSA 32:10, I(e) shall be the definition of "purpose" under RSA 32:3, V.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:4, eff. Aug. 9, 1996. 2004, 113:1, eff. July 16, 2004.

Section 32:11

32:11 Emergency Expenditures and Overexpenditures. – When an unusual circumstance arises during the year which makes it necessary to expend money in excess of an appropriation which may result in an overexpenditure of the total amount appropriated for all purposes at the meeting or when no appropriation has been made, the selectmen or village district commissioners, upon application to the commissioner of revenue administration or the school board upon application to the commissioner of education, may be given authority to make such expenditure, provided that:

I. Such application shall be made prior to the making of such expenditure. No such authority shall be granted until a majority of the budget committee, if any, has approved the application in writing. If there is no budget committee, the governing body shall hold a public hearing on the request, with notice as provided in RSA 91-A:2.

II. The commissioner of revenue administration or the commissioner of education may accept and approve an application after an expenditure if caused by a sudden or unexpected emergency, in which case paragraph I shall not apply.

III. Neither the commissioner of revenue administration nor the commissioner of education shall approve such an expenditure unless the governing body designates the source of revenue to be used. Neither commissioner shall have the authority to increase the town or district's tax rate in order to fund such an expenditure.

IV. When applying to the commissioner of education for such authority, the school board shall send a copy of such application to the department of revenue administration. The commissioner of education, when granting authority to the school board, shall notify, in writing, the commissioner of revenue administration of any and all authorizations given to school boards for emergency expenditures or overexpenditures, and the revenue source for funding such expenditures.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 214:5, eff. Aug. 9, 1996. 1999, 140:1, eff. Aug. 24, 1999.

Section 32:11-a

32:11-a Actual Expenditures for Special Education Programs and Services. – Each school district shall provide in its annual report an accounting of actual expenditures by the district for special education programs and services for the previous 2 fiscal years. Such accounting shall include offsetting revenues from all sources, including but not limited to, reimbursements from state funds, federal funds, or medicaid funds, private or other health insurance coverage, transferred special education moneys

received from another school district, and any other special education resources received by the district.

Source. 1999, 180:1, eff. Aug. 30, 1999.

Section 32:12

32:12 Penalty. – Any person or persons violating the provisions of this subdivision shall be subject to removal from office on proper petition brought before the superior court. Such petition shall take precedence over other actions pending in the court and shall be heard and decided as speedily as possible.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:13

32:13 Contracts; Expenditures Prior to Meeting. –

I. This subdivision shall not be construed to imply that a local legislative body, through its actions on appropriations, has the authority to nullify a prior contractual obligation of the municipality, when such obligation is not contingent upon such appropriations and is otherwise valid under the New Hampshire law of municipal contracts, or to nullify any other binding state or federal legal obligation which supersedes the authority of the local legislative body.

II. This subdivision shall not be construed to affect the authority of the local governing body, in towns with a March annual meeting and a January through December fiscal year, to make expenditures between January 1 and the date a budget is adopted which are reasonable in light of prior year's appropriations and expenditures for the same purposes during the same time period.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1997, 318:2, eff. Aug. 22, 1997. 2001, 71:3, eff. July 1, 2001.

Budget Committee

Section 32:14

32:14 Adoption. –

I. This subdivision may be adopted:

- (a) By any town with a town meeting form of government, including those with a budgetary town meeting or representative town meeting pursuant to RSA 49-D:3, II and III;
- (b) By a cooperative school district, in accordance with RSA 195:12-a;
- (c) By any village district, or district created under RSA 53-A or 53-B, which adopts its budget at an annual meeting of its voters, and which is located in more than one municipality; or
- (d) By any school district or village district which adopts its budget at an annual meeting of its voters, but which lies wholly within a municipality that lacks authority to adopt this subdivision.

II. This subdivision may be adopted by a majority vote of those present and voting, under an article in the warrant for the annual meeting, inserted by the governing body or by petition.

III. Voting shall be by ballot, but the question shall not be placed on the official ballot used to elect officers. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question.

IV. If the vote is favorable, the town or district shall at that same meeting vote, by ballot or other means, determine the number of members-at-large, as provided in RSA 32:15, I, and whether they shall be elected or appointed by the moderator.

V. A town or district which has adopted this subdivision may rescind its adoption in the manner described in paragraphs II and III.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:15

32:15 Budget Committee Membership. –

I. The budget committee shall consist of:

(a) Three to 12 members-at-large, who may be either elected or appointed by the moderator, as the town or district adopting the provisions of this subdivision shall by vote determine, who shall serve staggered terms of 3 years; and

(b) One member of the governing body of the municipality and, if the municipality is a town, one member of the school board of each school district wholly within the town and one member of each village district wholly within the town, all of whom shall be appointed by their respective boards to serve for a term of one year and until their successors are qualified. Each such member may be represented by an alternate member designated by the respective board, who shall, when sitting, have the same authority as the regular member.

II. If the meeting decides that members-at-large are to be appointed, the staggering of terms shall begin that same year, with 1/3 of such members chosen to hold office for one year, 1/3 for 2 years, and 1/3 for 3 years, and each year thereafter 1/3 shall be chosen for terms of 3 years and until their successors are appointed and qualified. If the number of members-at-large is not divisible by 3, the division shall be as even as possible over the 3 years. All such appointments shall be made within 30 days after the annual meeting.

III. If the meeting decides members-at-large are to be elected, the meeting shall either elect the initial members for one-year terms by means other than by official ballot, or shall authorize the moderator to appoint members to serve until the next annual meeting, as provided in RSA 669:17. Elections for staggered terms, as described in paragraph II, shall not begin until that next annual meeting, and shall be by official ballot if the municipality has adopted the official ballot system, as set forth in RSA 669.

IV. A town or district which has adopted this subdivision may vote at any subsequent annual meeting to change the number or manner of selection of its members-at-large. No such change shall take effect until the annual meeting following the meeting at which the change was adopted.

V. No selectman, town manager, member of the school board, village district commissioner, full-time employee, or part-time department head of the town, school district or village district or other associated agency shall serve as a member-at-large. Every member-at-large shall be domiciled in the town or district adopting this subdivision and shall cease to hold office immediately upon ceasing to be so domiciled.

VI. One of the members-at-large shall be elected by the budget committee as chair. The committee may elect other officers as it sees fit. A member-at-large shall cease to hold office immediately upon missing 4 consecutive scheduled or announced meetings of which that member received reasonable notice, without being excused by the chair.

VII. In municipalities where members-at-large are appointed, the chair shall notify the moderator immediately upon the occurrence of any vacancy in the membership-at-large, and the vacancy shall be filled by appointment by the moderator within 5 days of such notification, otherwise by the budget committee. In municipalities where members-at-large are elected, vacancies shall be filled by appointment by the budget committee. Persons appointed to fill vacancies shall serve until the next annual meeting at which time a successor shall be elected or appointed to either fill the unexpired term or start a new term, as the case may be.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1998, 141:1, 2, eff. Aug. 7, 1998.

Section 32:16

32:16 Duties and Authority of the Budget Committee. – In any town which has adopted the provisions of this subdivision, the budget committee shall have the following duties and responsibilities:

I. To prepare the budget as provided in RSA 32:5, and if authorized under RSA 40:14-b, a default budget under RSA 40:13, IX(b) for submission to each annual or special meeting of the voters of the municipality, and, if the municipality is a town, the budgets of any school district or village district wholly within the town, unless the warrant for such meeting does not propose any appropriation.

II. To confer with the governing body or bodies and with other officers, department heads and other officials, relative to estimated costs, revenues anticipated, and services performed to the extent deemed necessary by the budget committee. It shall be the duty of all such officers and other persons to furnish such pertinent information to the budget committee.

III. To conduct the public hearings required under RSA 32:5, I.

IV. To forward copies of the final budgets to the clerk or clerks, as required by RSA 32:5, VI, and, in addition, to deliver 2 copies of such budgets and recommendations upon special warrant articles to the respective governing body or bodies at least 20 days before the date set for the annual or special meeting, to be posted with the warrant.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2004, 219:4, eff. Aug. 10, 2004.

Section 32:17

32:17 Duties of Governing Body and Other Officials. – The governing bodies of municipalities adopting this subdivision, or of districts which are wholly within towns adopting this subdivision, shall review the statements submitted to them under RSA 32:4 and shall submit their own recommendations to the budget committee, together with all information necessary for the preparation of the annual budget, including each purpose for which an appropriation is sought and each item of anticipated revenue, at such time as the budget committee shall fix. In the case of a special meeting calling for the appropriation of money, the governing body shall submit such information not later than 5 days prior to the required public hearing. Department heads and other officers shall submit their departmental statements of estimated expenditures and receipts to the budget committee, if requested.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:18

32:18 Limitation of Appropriations. – In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. In official ballot referendum municipalities, the recommendation of the budget committee made for the first session of the meeting shall be used for determining the 10 percent limitation. These totals shall include appropriations contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for:

I. Bonds, and all interest and principal payments thereon.

II. Notes, except tax anticipation notes, and all interest and principal payments thereon.

III. Mandatory assessments imposed on towns by the county, state or federal governments.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2004, 68:2, eff. July 6, 2004.

Section 32:18-a

32:18-a Legislative Body Override of Limitation of Appropriations. –

I. Notwithstanding any other provision of law, in any municipality electing this subdivision, or any district wholly within a town electing this subdivision, if a bond request is not recommended in its entirety by the budget committee, the governing body of such municipality, after a majority vote by the governing body of the municipality in favor of the bond request at a duly posted meeting, shall place the bond request on the warrant.

II. The legislative body of any municipality described in RSA 32:18-a, I, may approve a bond request despite the 10 percent limitation provided in RSA 32:18 in the following manner:

(a) The governing body shall place the following statement at the beginning of the warrant article for such bond request: "Passage of this article shall override the 10 percent limitation imposed on this appropriation due to the non-recommendation of the budget committee." Immediately below the bond request on the warrant shall be displayed (1) the recommendation of the governing body and (2) the recommendation of the budget committee, as included in the budget forms for the annual meeting pursuant to RSA 32:5, IV.

(b) If those voting "Yes" on the bond request satisfy the requirements of RSA 33:8, the bond request is thereby approved.

III. If the bond request is approved pursuant to RSA 32:18-a, the governing body of such municipality shall forward a copy of the minutes of the duly posted meeting described in RSA 32:18-a, I to the commissioner of the department of revenue administration.

Source. 2000, 193:1, eff. July 29, 2000.

Section 32:19

32:19 Collective Bargaining Agreements. – Whenever items or portions of items in a proposed budget constitute appropriations, the purpose of which is to implement cost items of a collective bargaining agreement negotiated pursuant to RSA 273-A, either previously ratified or concurrently being submitted for ratification by the legislative body, or the purpose of which is to implement the recommendations of a neutral party in the case of a dispute, as provided in RSA 273-A:12, such items shall be submitted to the budget committee and considered in its budget preparation. Such appropriations shall be submitted to the legislative body and shall include a statement of the governing body's recommendation and a separate statement of the budget committee's recommendation. If such appropriations were not recommended by the budget committee, then such appropriations shall be exempt from the 10 percent limitation set forth in RSA 32:18. The failure of the budget committee to recommend any portion of such appropriations shall not be deemed an unfair labor practice under RSA 273-A.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2001, 71:4, eff. July 1, 2001.

Section 32:19-a

32:19-a Presentation of Negotiated Cost Items at the Annual Meeting. – Cost items, as defined under RSA 273-A:1, IV, shall be presented to the annual town or district meeting in accordance with the procedures established under RSA 32:5. For submission to the legislative body of the annual meeting,

cost items must be finalized by the date prescribed in RSA 39:3 for towns and by the date prescribed in RSA 197:6 for school districts. Cost items not negotiated in time to meet these dates may be submitted to the legislative body pursuant to the provisions of RSA 31:5 for towns and RSA 197:3 for school districts.

Source. 1996, 214:6, eff. Aug. 9, 1996.

Section 32:20

32:20 At Special Meetings. – So long as the provisions of this subdivision remain in force in any municipality, no appropriation shall be made at any special meeting for any purpose not approved by the budget committee, unless it is within the allowable 10 percent increase if RSA 32:18 has been adopted, except as provided in RSA 32:19 or 32:18-a.

Source. 1993, 332:1, eff. Aug. 28, 1993. 2000, 193:3, eff. July 29, 2000.

Section 32:21

32:21 Exceptions. – In cases where the town or a district wholly within the town has been ordered by the department of environmental services, under the provisions of RSA 147, 485 or 485-A, to install, enlarge or improve waterworks or to install, enlarge or improve sewerage, sewage, or waste treatment facilities, the 10 percent limitation of RSA 32:18 and 20, shall not apply.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 228:108, eff. July 1, 1996.

Section 32:22

32:22 Review of Expenditures. – Upon request by the budget committee, the governing body of the town or district, or the town manager or other administrative official, shall forthwith submit to the budget committee a comparative statement of all appropriations and all expenditures by them made in such detail as the budget committee may require. The budget committee shall meet periodically to review such statements. The provisions of this section shall not be construed to mean that the budget committee, or any member of the committee, shall have any authority to dispute or challenge the discretion of other officials over current town or district expenditures, except as provided in RSA 32:23.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:23

32:23 Initiation of Removal Proceedings. – Upon receipt of the reports provided for by RSA 32:22, the budget committee shall examine the same promptly, and if it shall be found that the governing body or town manager have failed to comply with the provisions of this chapter concerning expenditures, a majority of the committee, at the expense of the municipality, may petition the superior court for removal as provided in RSA 32:12.

Source. 1993, 332:1, eff. Aug. 28, 1993.

Section 32:24

32:24 Other Committees. – Nothing in this subdivision shall prevent a municipality or school administrative unit from establishing advisory budget or finance committees, with such duties and powers as the municipality or school administrative unit sees fit, but no such committee's recommendations shall have any limiting effect on appropriations, as set forth in RSA 32:18, unless all the procedures in this subdivision are followed.

Source. 1993, 332:1, eff. Aug. 28, 1993. 1996, 98:1, eff. July 1, 1996.

Biennial Budgets

Section 32:25

32:25 Biennial Budget; Authorization. – Any city, town, unincorporated town, unorganized place, school district, village district, or county may budget receipts and expenditures, raise and appropriate revenues, and assess taxes on a biennial budget basis consisting of one distinct 24-month fiscal year or 2 distinct 12-month fiscal years. The governing body may allow for the carry over of funds from the first fiscal year of the biennium to the second.

Source. 1998, 54:1, eff. April 1, 1998. 2006, 148:1, eff. July 21, 2006.

Section 32:26

32:26 Procedure for Adoption. – Any city, town, unincorporated town, unorganized place, school district, village district, or county may adopt the provisions of RSA 32:25 relative to a biennial budget in the normal manner used in the political subdivision for acts of the local legislative body.

Source. 1998, 54:1, eff. April 1, 1998.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 49-B

HOME RULE--MUNICIPAL CHARTERS

Section 49-B:1

49-B:1 Purpose and Intent. – It is the purpose of this chapter to implement the home rule powers recognized by article 39, part first, of the constitution of the state of New Hampshire. To that end, the general court hereby provides a vehicle whereby a municipality may adopt a form of government that best addresses local needs. At the same time, however, the general court recognizes a need to require uniform procedures and practices when there is a corresponding state interest. Therefore, this chapter is intended only to provide a procedural framework by which a city or town may amend its actual form of government. Nothing in this chapter shall be construed to create any power in, or confer any power upon, any city or town beyond that necessary to carry out the amendment of a charter or form of government as set forth in this chapter. The general laws of this state shall remain in full force and effect, and they shall be construed to be consistent with this chapter to the greatest extent possible in the effectuation of this chapter's stated purpose. Accordingly, this chapter shall be strictly interpreted to allow towns and cities to adopt, amend, or revise a municipal charter relative to their form of government so long as the resulting charter is neither in conflict with nor inconsistent with the general laws or the constitution of this state.

Source. 1979, 241:1. 1988, 223:1, eff. June 29, 1988.

Section 49-B:2

49-B:2 Scope of Authorization; Definitions. –

I. Any incorporated town or city, regardless of population, shall be entitled to exercise the home rule powers recognized by article 39, part first, of the New Hampshire constitution, and implemented through this chapter, to create a charter commission and to present to its voters by referendum a municipal charter, in which they may establish either a town or city government.

II. If the proposed charter denominates the municipality as a town, the charter shall be prepared pursuant to RSA 49-D.

III. If the proposed charter denominates the municipality as a city, the charter shall be prepared pursuant to RSA 49-C.

IV. In this chapter:

(a) "Amendment" means the enactment or repeal of a single section or subsection of a charter pertaining to any one subject matter, and any related section the meaning or operation of which is changed as a result of the enactment or repeal.

(b) "Elected body" means the mayor and board of aldermen, mayor and council, and city council in a city adopting a charter under RSA 49-C and a town council or representative town meeting in a town adopting a charter under RSA 49-D.

(c) "Governing body" means the board of selectmen, the board of aldermen, or the council in a city or in a town with a town council.

(d) "Legislative body" means a town meeting, representative town meeting, city or town council, mayor and council, and mayor and board of aldermen.

(e) "Municipality" means a city or a town.

(f) "Municipal officers" means 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.

(g) "Municipal year" means the fiscal year of the municipality.

(h) "Operating budget" means total appropriations, as determined by the department of revenue administration, exclusive of county and school taxes; principal and interest payments on bonds and notes; and amounts in satisfaction of court judgments.

(i) "Revision" means multiple changes in the basic form of government proposed by several enactments or repeals.

(j) "Revocation" means the repeal of an entire charter such that the resultant form of government is the form in existence immediately prior to the adoption of the charter being repealed.

Source. 1979, 241:1. 1988, 223:2. 1991, 162:1; 304:3, 4, eff. Aug. 23, 1991. 2003, 289:9, eff. Sept. 1, 2003.

Section 49-B:3

49-B:3 Charter Revisions, Adoptions, Procedure. –

I. The municipal officers may determine that the revision of the municipal charter is necessary or that adoption of a new municipal charter is necessary and, by order, provide for the establishment of a charter commission to carry out such purpose as provided in this chapter; or

II. On the written petition of a number of voters equal to at least 20 percent of the number of votes cast in the municipality at the last regular municipal election, but in no case less than 10 voters, the municipal officers shall, by order, provide for the establishment of a charter commission for the revision of the municipal charter or for the preparation of a new municipal charter in the form and manner provided in this chapter.

III. The following procedure shall be used in the alternative method set out in paragraph II.

(a) Any 5 voters of the municipality may file with the municipal clerk an affidavit stating they will constitute the petitioners' committee, circulate the petition and file it in proper form. The affidavit shall state the names and addresses of the members and specify the address to which all notices to the committee are to be sent. The petitioners' committee may designate additional voters of the municipality, who are not members of the committee, to circulate the petition. Promptly after the affidavit is filed, the clerk shall issue petition blanks to the committee.

(b) The petition forms shall be printed on paper of uniform size and may consist of as many individual sheets as are reasonably necessary. Petition forms shall be prepared by the municipal clerk at the expense of the municipality.

(1) Petition forms shall carry the following legend in bold lettering at the copy of each form on the face thereof.

Municipality of

"Each of the undersigned voters respectfully requests the municipal officers to establish a charter commission for the purpose of revising the municipal charter or preparing a new municipal charter." Each signature affixed to a petition shall be in ink or other indelible instrument and shall be followed by the place of domicile of the voter with street and number, if any. No petition shall contain any party or political designation.

(2) The clerk shall note the date of each petition form issued and all petitions, unless sooner filed, shall become null and void for every purpose on the 120th day after the date of issue.

(3) Each petition form shall have printed on its back an affidavit to be executed by the circulator, stating that he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names

they purport to be, that each signer has signed no more than one petition, and that each signer had an opportunity before signing to read the petition.

(4) Petition forms shall be assembled as one instrument and filed at one time with the clerk. The clerk shall note thereon the date of filing.

IV. Within 20 days after the petition is filed, the clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, shall promptly send a copy of the certificate to the petitioners' committee by mail, and shall file a copy with the municipal officers.

(a) A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the clerk within 2 days after receiving the copy of his certificate. Within 10 days after the date of filing of the notice of intention, the committee may file a supplementary petition to correct the deficiencies in the original petition. Such supplementary petition shall in form and content comply with the requirements for an original petition under paragraph III.

(b) Within 5 days after the filing of a supplementary petition the clerk shall complete and file a certificate as to its sufficiency in the manner provided for in an original petition.

(c) When an original or supplementary petition has been certified insufficient, the committee may, within 2 days after receiving the copy of the clerk's certificate, file a request with the municipal officers for review. The municipal officers shall inspect the petitions and shall make due certificate thereof, copies of which shall be filed with the municipal clerk and mailed to the committee. The certificate of the municipal officers shall be a final determination of the sufficiency of the petitions.

(d) Any petitions finally determined to be insufficient shall become null and void and of no further force or effect. Such petitions shall be stamped void by the clerk and shall be sealed and retained by the clerk in the manner required for secret ballots.

V. Within 30 days after the adoption of an order under paragraph I or the receipt of a certificate or final determination of sufficiency under paragraph IV, the municipal officers shall by order submit the question for establishment of a charter commission to the voters at the next regular municipal election or, in the case of municipalities with biennial elections, 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 by order submit the question for establishment of a charter commission to the voters at a special municipal election held not less than 60 days nor more than 90 days after the adoption of such an order or receipt of such a certificate of final determination. The question to be submitted to the voters shall be in substance as follows:

"Shall a charter commission be established for the purpose of revising the municipal charter or establishing a new municipal charter?"

VI. Notwithstanding any other provision of this chapter, for the purposes of establishing a charter commission to amend or adopt a charter relative to official ballot town council under RSA 49-D:3, I-a, official ballot town meeting under RSA 49-D:3, II-a, budgetary official ballot village district meeting under RSA 52:2-a, or budgetary official ballot school district meeting under RSA 197:5-b only, the question of whether to establish a charter commission and the election of charter commission members shall be placed on the same ballot. No other issues shall be addressed by a charter commission established under this paragraph. The question on the establishment of a charter commission to be submitted to the voters shall be in substance as follows:

"Shall a charter commission be established for the sole purpose of establishing official ballot voting under the current form of government?"

Source. 1979, 241:1. 1991, 304:5, 12. 1995, 53:1. 1998, 343:1, eff. Aug. 25, 1998. 2003, 289:10, eff. Sept. 1, 2003.

Section 49-B:4

49-B:4 Charter Commission, Membership, Procedure. –

I. The charter commission shall consist of 9 members, all of whom shall be registered voters of the municipality and elected as hereinafter provided.

(a) Within 5 days after the deadline for a recount of a vote confirming the establishment of a charter commission, the municipal officers shall meet to order a special election to be held on the Tuesday not less than 56 days nor more than 63 days after such meeting for the purpose of electing charter commission members.

(b) Members shall be elected in the same manner as the municipal officers except that they shall be elected at large and without party designation. The names of the candidates shall be arranged alphabetically by surname.

II. The municipal clerk shall within 7 days after the election of the charter commission members, notify those elected to the charter commission of the date, time and place of the organizational meeting of the charter commission. Such date, time and place shall be fixed by the clerk and 7 days' notice of the organizational meeting shall be given. The charter commission shall organize by electing from its members a chairman, vice chairman and a secretary and shall file notice thereof with the municipal clerk. Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the municipality. Members shall serve without compensation but shall be reimbursed from the commission's account for expenses lawfully incurred by them in the performance of their duties.

III. The charter commission may adopt rules and regulations governing the conduct of its meetings and proceedings and may employ such legal, research, clerical or other employees and consultants as are deemed necessary within the limits of its budget.

IV. (a) A municipality shall provide its charter commission, free of charge, with suitable office space and with reasonable access to facilities for holding public hearings, may contribute clerical and other assistance to such commission, and shall permit it to consult with and obtain advice and information from municipal officers, officials and employees during ordinary working hours. Within 20 days after the election of a charter commission, the municipal officers shall credit to the charter commission account the sum of \$100. A municipality may from time to time appropriate additional funds to the charter commission account. Such funds may be raised by taxation, borrowed or transferred from surplus.

(b) In addition to funds made available by a municipality, the charter commission account may receive funds from any other source, public or private, provided, that no contribution of more than \$5 shall be accepted from any other source other than the municipality unless the name and address of the person or agency making the contribution and the amount of the contribution are disclosed in writing filed with the clerk. Within 30 days after submission of its final report the charter commission shall file with the clerk a complete account of all its receipts and expenditures for public inspection. Any balance remaining in its account shall be credited to the municipality's surplus account.

V. Within 14 days after its organizational meeting, the charter commission shall hold a public meeting for the purpose of receiving information, views, comments and other pertinent material relative to its functions. Within 170 days after its election, the charter commission shall prepare a preliminary report including the text of the charter or charter revision which the commission intends shall be submitted to the voters and any explanatory information the commission deems desirable, shall cause such report to be printed and circulated throughout the municipality, and shall provide sufficient copies of the preliminary report to the municipal clerk to permit its distribution to each voter requesting it. Within 231 days after its election, the charter commission shall submit to the municipal officers its final report, which shall include the full text and explanation of the proposed new charter or charter revision, such comments as the commission deems desirable, an indication of the major differences between any current and proposed charters and a written opinion by an attorney admitted to the bar of this state that the proposed charter or charter revision is not in conflict with the constitution or the general laws. Minority reports if filed shall not exceed 1,000 words. All public hearings before a charter commission shall be held within the municipality at such times and places as may be specified in a notice published at least 7 days prior to the hearing in a newspaper having general circulation in the municipality, but hearings may be adjourned from time to time without further published notice.

VI. Upon the filing of the final report, the municipal officers shall order, as determined by the charter commission, the proposed new charter or charter revision to be submitted to the voters at the next primary or general municipal election or, in the case of municipalities with biennial elections, at the next regular state biennial election held at least 45 days after the filing of the final report.

VII. The charter commission shall continue in existence for 60 days after submission of its final report to the municipal officers for the purpose of winding up its affairs.

Source. 1979, 241:1. 1988, 223:3. 1991, 304:6, 7. 1992, 96:1; 194:1-3, eff. July 11, 1992. 2003, 25:4, eff. April 30, 2003. 2006, 22:1, eff. May 30, 2006.

Section 49-B:5

49-B:5 Charter Amendments, Procedure. –

I. The municipal officers may determine that amendments to the municipal charter are necessary and, by order, provide for notice and hearing on them in the same manner as provided in RSA 49-B:5, IV(a). Within 7 days after the hearing, the municipal officers may order the proposed amendment to be placed on a ballot at the next regular municipal election or, in the case of municipalities with biennial elections, at the next regular state biennial election held not less than 60 days after the order is passed; or they may order a special election to be held not less than 60 days from the date of the order for the purpose of voting on the proposed amendments.

(a) Each amendment shall be limited to a single subject, but more than one section of the charter may be amended as long as it is germane to that subject.

(b) Alternative statements of a single amendment are prohibited.

II. On the written petition of a number of voters equal to at least 20 percent of the number of votes cast in a municipality at the last regular municipal election, but in no case less than 10 voters, the municipal officers shall, by order, provide that proposed amendments to the municipal charter be placed on a ballot in accordance with the procedures set out below.

(a) Each amendment shall be limited to a single subject but more than one section of the charter may be amended as long as it is germane to that subject.

(b) Alternative statements of a single amendment are prohibited.

III. The petition forms shall carry the following legend in bold lettering at the top of each form on the face thereof.

Municipality of

"Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below." No more than one subject may be included in a petition. In all other respects the form, content and procedures governing amendment petitions shall be the same as provided for charter revision and adoption petitions under RSA 49-B:3 including procedures relating to filing, sufficiency and amendments.

IV. (a) Within 10 days of receipt of a report that a petition is sufficient, the municipal officers shall by order provide for a public hearing on the proposed amendment. The notice of the hearing shall be published in a newspaper having general circulation in the municipality at least 7 days prior to the hearing, and shall contain the text of the proposed amendment and a brief explanation. The hearing shall be conducted by the municipal officers or a committee appointed by them.

(b) Within 7 days after the public hearing, the municipal officers or the committee appointed by them shall file with the municipal clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this state that the proposed amendment is not in conflict with the general laws or the constitution. In the case of a committee report, a copy shall be filed with the municipal officers.

(c) Within 7 days after the hearing, the municipal officers shall order the proposed amendment to be placed on the ballot at the next regular municipal election or, in the case of municipalities with biennial elections, at the next regular municipal election or, in the case of municipalities with biennial elections,

at the next regular state biennial election, if such election is held not less than 60 days nor more than 365 days thereafter. Otherwise, the municipal officers shall order a special election to be held not less than 60 days from the date of the order for the purpose of voting on the proposed amendments.

Source. 1979, 241:1. 1988, 223:4, 5. 1991, 304:13. 1992, 96:2, 3. 1995, 53:2, eff. July 8, 1995. 2005, 38:1, eff. July 16, 2005.

Section 49-B:5-a

49-B:5-a Approval and Review. –

I. Within 10 days of the filing of the preliminary report relative to any new municipal charter, charter revision, or charter amendment, the municipal clerk shall file a certified copy of said report with the secretary of state, the attorney general and the commissioner of the department of revenue administration. Within 30 days of the receipt of said report, the secretary of state, attorney general and commissioner of the department of revenue administration, or their designees shall jointly review the proposed charter, charter revision, or charter amendment to insure that it is consistent with the general laws of this state.

II. If the secretary of state, the attorney general, or the commissioner of the department of revenue administration do not approve, the proposed charter or charter amendment question shall not be placed on the municipal ballot. The secretary of state, attorney general and commissioner of the department of revenue administration shall specify their objections in writing to the municipal clerk within the period of time allowed for review and shall offer recommendations for changes in language which would correct any inconsistencies they may find in the proposed charter or charter amendment to be voted upon. Failure to specify objections to a proposed charter or charter amendment under this section shall constitute approval by the secretary of state, attorney general, or the commissioner of the department of revenue administration.

III. The governing body of the municipality may seek judicial review of a decision of the secretary of state, attorney general or the commissioner of the department of revenue administration by appeal in superior court, pursuant to RSA 49-B:10, IV.

Source. 1988, 223:6. 1991, 304:8. 1992, 194:4, eff. July 11, 1992. 2006, 22:2, eff. May 30, 2006.

Section 49-B:6

49-B:6 Submission to Voters. – The method of voting at municipal elections when a question relating to a charter revision, a charter adoption or a charter amendment is involved shall be in the manner prescribed for municipal elections.

I. In the case of a charter revision or a charter adoption the question to be submitted to the voters shall include a summary which explains both the current form of government utilized by the municipality as well as the changes in that form of government which will occur if the charter revision or charter adoption question is approved by the voters. The question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the (charter revision) (new charter) recommended by the charter commission?"

II. In the case of a charter amendment the question to be submitted to the voters shall be in substance as follows:

"Shall the municipality approve the charter amendment reprinted (summarized) below?"

III. VOTER INFORMATION.

(a) In the case of a charter revision or charter adoption, at least 2 weeks prior to the date of the election the municipal officers shall cause the final report of the charter commission to be printed, shall

make copies available to the voters in the clerk's office and shall post the report in the same manner that proposed ordinances are posted.

(b) In the case of a charter amendment, at least 2 weeks prior to the date of the election, the municipal officers shall cause the proposed amendment and any summary thereof to be printed, shall make copies available to the voters in the clerk's office and shall post the amendment and any summary thereof in the same manner that proposed ordinances are posted.

IV. If a majority of the ballots cast on any question under paragraph I or II favor acceptance, the new charter, charter revision or charter amendment becomes effective as provided in subparagraph (a) or (b).

(a) Charter revisions, new charters, or revocations of a charter adopted by the voters shall become effective immediately for the purpose of conducting necessary elections; otherwise charter revisions, new charters, and revocations of charters become effective on the first day of the next succeeding municipal year or as specified in any transition provisions of the charter.

(b) Charter amendments adopted by the voters shall become effective on the first day of the next succeeding municipal year or on a date determined by the municipal officers, whichever occurs first.

Source. 1979, 241:1. 1983, 34:1. 1985, 128:1. 1991, 304:9, eff. Aug. 23, 1991.

Section 49-B:7

49-B:7 Recording. – Within 3 days after the results of the election have been declared, the municipal clerk shall prepare and sign duplicate certificates setting forth any charter that has been adopted or revised and any charter amendment approved. One certificate shall be recorded in the office of the secretary of state and one certificate shall be deposited in the office of the municipal clerk.

Source. 1979, 241:1, eff. Aug. 14, 1979.

Section 49-B:8

49-B:8 Ordinance, Power Limited. – Any municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function granted to a municipality by the constitution or general law. No change in the composition, mode of election or terms of office of the legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance.

Source. 1979, 241:1. 1988, 223:8, eff. June 29, 1988.

Section 49-B:8-a

49-B:8-a Powers of Town Council. – [Repealed 1991, 304:15, eff. Aug. 23, 1991.]

Section 49-B:8-b

49-B:8-b Powers of Representative Town Meeting [Omitted]. –

Section 49-B:9

49-B:9 Private, Special, and General Laws. – Private and special laws applying to a specific municipality and general laws which a municipality has the option to adopt or rescind shall continue in force and effect unless specifically repealed by a charter adoption, revision, or amendment under this chapter.

Source. 1979, 241:1. 1988, 223:11, eff. June 29, 1988.

Section 49-B:10

49-B:10 Judicial Review. –

I. The superior court may, upon petition of 10 voters of the municipality or on petition of the attorney general, enforce this chapter.

II. A petition for declaratory relief may be brought on behalf of the public by the attorney general or, by leave of the court, by 10 voters of the municipality. In the case of petition of 10 voters, the attorney general shall be served with notice of the preliminary petition for leave, and may intervene as a party at any stage of the proceedings; and the petitioners shall be liable for, but may in the court's discretion also be awarded costs, which may include reasonable attorney's fees.

III. Judicial review to determine the validity of the procedures whereby any charter is adopted, revised or amended may be had by petition of 10 voters of the municipality brought within 30 days after the election at which such charter, revision or amendment is approved. If no such petition is filed within such period, compliance with all the procedures required by this chapter and the validity of the manner in which such charter adoption, revision or amendment was approved shall be conclusively presumed. No charter adoption, revision or amendment shall be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption, revision or amendments.

IV. Any municipality aggrieved by the decision of the secretary of state under RSA 49-B:5-a may seek review by way of appeal in superior court to determine the lawfulness of the secretary's decision. The clerk shall schedule a hearing on any such appeal within 10 days of the filing of such petition.

Source. 1979, 241:1. 1988, 223:10, eff. June 29, 1988.

Section 49-B:11

49-B:11 Construction. – [Repealed 1988, 223:14, eff. June 29, 1988.]

Section 49-B:12

49-B:12 Return to Former Form of Government. –

I. Notwithstanding the provisions of this chapter, any town, through the petition procedure in RSA 49-B, may repeal its charter and return to its former form of government without establishing a charter commission.

II. The question of whether the town should repeal its charter and return to its former form of government shall be put to the voters in the same manner as an amendment to a charter, under RSA 49-B:5.

Source. 1991, 304:10, eff. Aug. 23, 1991.

Section 49-B:13

49-B:13 Separability; Preservation. –

I. The provisions of this chapter and of charters created under this chapter are separable. If any portion of this chapter, or of any charter adopted under the provisions of this chapter, or if the application of the chapter or such charter to any person or circumstance shall be invalid, the remainder of the chapter or such charter or the application of such invalid portions to other persons or circumstances shall not be affected by such invalidation.

II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby legalized, provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state.

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting or representative town meeting pursuant to RSA 49-D:3, II and III.

Source. 1991, 304:10. 1993, 332:4, eff. Aug. 28, 1993.

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, and adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy.

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, eff. July 8, 1995. 2003, 205:1, eff. June 30, 2003; 289:12, 13, eff. Sept. 1, 2003. 2004, 254:2, eff. Aug. 14, 2004.

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.

EXHIBIT D

Letter from New Hampshire
Department of Revenue Administration
dated April 15, 2008



**State of New Hampshire
Department of Revenue Administration**

57 Regional Drive, PO Box 487, Concord, NH 03302-0487
Telephone (603) 271-3397
www.revenue.nh.gov



ADMINISTRATION
G. Philip Blaisos
Commissioner

Margaret L. Fulton
Assistant Commissioner

April 15, 2008



MUNICIPAL SERVICES
Barbara J. Robinson
Director
Donald Borrer
Assistant Director

Mr. Jonathan Sistare, Town Manager
Town of Salem
33 Geremonty Drive
Salem, NH 03079

RE: Salem Charter/Budget Committee

Dear Mr. Sistare:

You recently inquired about the Department's understanding of the Salem Budget Committee and other provisions of RSA 32 relative to the Charter adopted under RSA 49-D:3, II-a. It appears RSA 49-B:13, III was not amended in 1995 to include charters adopted under 49-D:3, II-a. Our recommendation to you via email and phone conversations was that you may want to seek amendment of RSA 49-B:13, III, and amend the Salem Town Charter to clarify "with precision" the budget preparation and finalization process.

Per our discussion it is anticipated that both of these changes will be completed within a year, based upon your representations that you are working with your state representative to amend the statutory scheme. In the interim, the Department will recognize the existing Budget Committee's role in the budget adoption process under RSA 32 for several reasons.

First, the last sentence of Section II of the Charter adopted on March 10, 1998 states, "Optional provisions of the town meeting form of government that are permitted by statute and that have been adopted by the town meeting shall continue to apply unless rescinded by a town meeting." Lacking wording to the contrary, a prudent voter casting a vote for/against the Charter might interpret this to mean continuation of the existing Budget Committee. In fact, the next year, Warrant Article #47 of the 1999 Annual Meeting, increased the Budget Committee's composition from six members to nine members. The article stated in part, "This will be in keeping with the new amendment to the State Law in RSA 32 which allows this change to prevent tie votes on the Budget Committee....". Again, a prudent voter would understand this to mean the Town had an official budget committee under the provisions of RSA 32.

Second, it would appear that voters further continued to believe the Town of Salem's government provided for the "optional provisions of the town meeting form of

TDD Access: Relay NH 1-800-735-2964

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Municipal Services Division.

Mr. Jonathan Sistare
Town of Salem
April 15, 2008
- Page 2 -

government permitted by statute and that have been adopted by the town meeting shall continue to apply unless rescinded by a town meeting" as stated in the Charter. As recent as the 2008 Annual Meeting, voters cast over 6,100 votes to elect two Budget Committee members for a three-year term.

Finally, neither Town nor school annual meeting forms or documents submitted to the Department since 1998 have indicated a vote to rescind the continuation of the Budget Committee. In fact, the Rockingham Superior Court issued an order to the Budget Committee in Salem School District v. Budget Committee of the Town of Salem recognizing the importance of the Budget Committee's duties and how their budget recommendations can influence voters. Hence, we will continue to recognize the law as interpreted by the Superior Court in its 2001 decision in Salem School District v. Budget Committee of the Town of Salem, N.H. Super. Ct. Rockingham Cty., Feb. 5, 2001 as well as Baker v. Hudson, 110 N.H. 389 (1970).

I trust this will provide the Town of Salem with some assurance that the Department will recognize the existing Budget Committee's role in the budget adoption process under RSA 32 until such time as the law and the charter are revised or until the Town's legislative body takes action to rescind the previously adopted Budget Committee.

Sincerely,



Barbara Robinson
Director of Municipal Services

Cc: Margaret Fulton, Assistant Commissioner

EXHIBIT E

**Chapter 243 (HB 1226) of the Laws of the
2008 Legislative Session**

CHAPTER 243

HB 1226 - FINAL VERSION

05Mar2008... 0460h

05/01/08 1473s

05/01/08 1625s

2008 SESSION

08-2334

08/03

HOUSE BILL **1226**

AN ACT allowing the town of Bristol to establish a capital reserve fund for use of the water works and sewer department, and relative to applying municipal budget law to municipalities adopting, revising, or amending a charter by official ballot town meeting or town council.

SPONSORS: Rep. B. Williams, Graf 8; Rep. Lovett, Graf 8; Rep. P. Preston, Graf 8; Sen. Reynolds, Dist 2

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill allows the town of Bristol to establish a capital reserve fund for use of the water works and sewer department.

This bill applies municipal budget law to municipalities adopting, revising, or amending a charter by official ballot town meeting or town council.

.....

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

05Mar2008... 0460h

05/01/08 1473s

05/01/08 1625s

08-2334

08/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eight

AN ACT allowing the town of Bristol to establish a capital reserve fund for use of the water works and sewer department, and relative to applying municipal budget law to municipalities adopting, revising, or amending a charter by official ballot town meeting or town council.

Be it Enacted by the Senate and House of Representatives in General Court convened:

243:1 Authorization of Combination of Funds. The water works and sewer department of the town of Bristol may establish a joint capital reserve fund for the purposes as provided in RSA 35:1. Such reserve fund shall be established only from surplus from water or sewer rentals and no part thereof shall be made from appropriations by the town of Bristol.

243:2 Municipal Charters; Severability. Amend RSA 49-B:13, III to read as follows:

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting, ***official ballot town meeting, an official ballot town council***, or representative town meeting pursuant to RSA 49-D:3, ***I-a, II, II-a*** and III.

243:3 Budget Committee; Adoption. Amend RSA 32:14, I(a) to read as follows:

(a) By any town with a town meeting form of government, including those with a budgetary town meeting, ***official ballot town meeting***, or representative town meeting pursuant to RSA 49-D:3, II, ***II-a***, and III, ***or by a town with an official ballot town council form of government under which part or all of the annual town operating budget is voted upon by official ballot***;

243:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 24, 2008

Effective Date: August 23, 2008

EXHIBIT F

Town of Salem Charter

Adopted

Charter for the Town of Salem

I. Purpose. This charter defines the requirements for including an official ballot session in the town meeting under provisions of RSA 49-D:3, II-a, and defines the form of government for the Town of Salem.

II. Form of Government. The Town of Salem shall have a town meeting form of government with a board of selectmen, with the additional provision that there shall be both official ballot and open sessions of the town meeting. All statutory provisions applicable to towns with town meeting and board of selectmen shall apply to Salem, except as described herein. Optional provisions of the town meeting form of government that are permitted by statute and that have been adopted by the town meeting shall continue to apply unless rescinded by a town meeting.

III. Town meeting sessions and dates. The annual town meeting shall consist of three sessions; a first open session, an election and official ballot session, and a final open session.

The first open session of the annual town meeting shall be held between the first and second Saturdays, inclusive, after the last Monday in January. The first session shall have the authority to debate and amend only those articles listed under IV, subparagraphs b, c, d, and e, which shall be placed on the official ballot, except that wording prescribed by statute shall not be subject to amendment. Motions to restrict reconsideration at the first session shall prohibit further action on restricted articles until the official ballot session. All articles submitted to the first session shall be placed on the official ballot. Any official ballot article that the first open session has not acted upon before the second Monday in February shall be placed on the ballot in its original form.

The election and official ballot session shall be held on the second Tuesday in March. Voting at the election and official ballot session shall conform to the procedures of general law for town elections, including all requirements pertaining to absentee voting, polling place, and polling hours.

The final open session shall commence on the first Saturday after the second Tuesday in March. The open session may consider any article not required to be acted on by the official ballot session, including, without limitation, articles to appropriate funds for any identified purpose, and petition warrant articles that Section IV does not require to be on the official ballot. The open session shall adopt an operating budget if it was not adopted by the official ballot session. The open session may not reconsider any other actions of the official ballot session.

IV. Official ballot. The following items shall be included on the official ballot:

- a. Elections
- b. The annual operating budget
- c. Bond articles and issuance of debt pursuant to RSA 33
- d. Questions on the adoption, or rescinding the adoption of provisions of general laws that are optional for towns
- e. Factfinders reports and cost items of collective bargaining agreements
- f. Zoning articles, charter amendments, and other subjects required by general law to be placed on the official ballots for towns; procedures and schedules for which shall not be affected by this charter.

"Operating budget" as used in this charter means "budget," as defined in RSA 32:3, III, exclusive of "special warrant articles," as defined in RSA 32:3, VI, and exclusive of separate warrant articles.

Approved March 10, 1993
Brian M. Lussell
Town Clerk 3/11/93

1347-1192

V. Dates for meetings, submittal of articles, and public hearings. The board of selectmen shall set the dates and times for all town meeting sessions within the times prescribed by general law and this charter.

For the budget, bond articles, issuance of debt, and other articles required to be on the official ballot, and that are to be considered by the first open session, as provided by Article IV b, c, d, and e of this charter, the general law requirements for public hearings and posting notice thereof shall apply, and dates shall be calculated from the date set for the first open session of the town meeting.

For zoning articles, charter amendments, and other subjects required by general law to be placed on the official ballot, the general law requirements for public hearings and posting notice thereof shall apply, and dates shall be calculated from the second Tuesday in March.

Submission of and hearings on articles to be considered at the final open session, for zoning and other articles to be considered only by official ballot, and conduct of the open sessions of the town meeting and of the town elections shall be in accordance with general law as it applies to town meetings commencing on the second Tuesday in March.

The warrant for the first open session of the town meeting shall be prepared and posted in accordance with notice and other requirements for a meeting to be held on the date specified. The warrant shall provide notice of the official ballot items to be considered by the first open session, and notice of the dates and general subject matter for the official ballot session and the final open session.

A single warrant shall be prepared and posted for the election/official ballot session and the final open session, to include the provision for elections, the articles which are prescribed by statute to be on the official ballot, the articles for the official ballot in the final form determined by the first session, and the articles to be considered at the open session following the official ballot session.

VI. Finalization process for the annual budget. A provisional article for the annual budget shall be placed on the warrant for the final open town meeting session, to be acted on only if the operating budget is not adopted by the official ballot session. If the official ballot session fails to adopt an annual operating budget, then the open session shall adopt an annual budget before the session is adjourned.

VII. Procedures for transfer of funds. The provisions of general law relative to procedures for transfer of funds among various departments, funds, accounts, and agencies shall apply to the Town of Salem, regardless of whether appropriations were made by official ballot or at the open session of the town meeting.

VIII. Special meetings. The official ballot procedure shall apply to special meetings when this charter requires the articles to be acted on by official ballot. The warrant for any special meeting shall prescribe the date, place, and hour for the meeting. If an official ballot is required, the warrant shall prescribe the date, place, and hour for both sessions. The second session shall be warned for a date not fewer than 28 days nor more than 60 days following the first session. Not more than one special meeting to raise and appropriate money for the same question or issue shall be held in any fiscal year. The general law provisions for calling special meetings shall apply.

IX. Amendments to the Charter. This charter may be amended as provided by general law.

X. Date effective. This charter shall be effective upon adjournment of the final open session of the meeting at which it is adopted.

EXHIBIT G

Board of Selectmen Charge to the
Committee dated May 12, 2008

Salem Charter Reform Committee (SCRC)

Committee Makeup

- The Chairman of the Board of Selectmen or their designee
- The Chairman of the Municipal Budget Committee or their designee
- The Chairman of the School Board or their designee
- The Chairman of the Town's CIP Committee or their designee
- Four Citizens who are not a members of the four boards listed above (to be appointed by the Board of Selectmen) of which 3 will be regular voting members and the 4th shall be an alternate to vote when one of the other 3 is not present.

Committee Charge

- I. RSA 49-B:5, I allows Town Meeting by vote of a simple majority to make minor changes to the Town Charter without the implementation of a Charter Commission. The Board of Selectmen would like SCRC's recommendation on the following minor changes:
 - a. Minor changes to the Town's Charter to clarify the Budget Committee's role "with precision" as stated in the Department of Revenue Administration's (DRA) letter to the Town Manager on April 15, 2008. If yes, what changes should be specified and why?
 - b. A change in the span of the Town's Fiscal Year (currently Jan – Dec). If, yes, what should that span be and why?
 - c. The changing of the criteria for a bond passage for the Town from 2/3 to 3/5. *SCRC's analysis should address the Town's success at implementing its CIP plan vs. its current debt load. The analysis should also compare other communities of similar size and needs.*
 - d. Finally, the Board of Selectmen would like SCRC's recommendation for any other minor changes to the Town's Charter that are allowed by State Statute.
- II. Given the recent discussion amongst the public and in the media relative to coordination of capital needs between the Town and School District, what is SCRC's opinion on this issue? Can the Town and School District adequately plan long-term capital expenditures under the current form of government without adversely affecting the tax rate?
- III. Finally, should the Board of Selectmen exercise its authority under RSA 49-B:3,I and ask Town Meeting to establish a Charter Commission for:
 - a. Making major changes to the Town's Charter not referenced in II or II, but recommended by SCRC?
 - b. Alternatively, for purpose of changing to another form of government?

Additional Direction to the Committee

- A. At SCRC's first meeting it should organize and elect a Chairman, Vice Chairman and Secretary.
- B. Being formed at the request of the Board of Selectmen and in accordance with State Statute, SCRC must adhere to the State's Right to Know Law (RSA 91).
- C. SCRC is to make its final report at a meeting of the Board of Selectmen no later than September 22, 2008.
- D. Shortly after organizing SCRC should put together a schedule of its meetings and topics to be discussed as to how it is going to meet its deadline. This schedule should include:
 - A meeting with a counsel from the Local Government Center (LGC) to advise on what can and cannot be done.
 - At least one opportunity for public input via a public hearing.
- E. SCRC should recognize that it is NOT a Charter Commission, and that the Board of Selectmen is not seeking a recommendation from it as to possible specific alternatives to the current form of government. This would be for a Charter Commission to determine. However, the Board of Selectmen recognizes that discussions along these lines are inevitable as you deliberate on these matters. SCRC should also note that should a Charter Commission be formed, it may come back with a recommendation for no changes at all.
- F. Finally, given E., the fact that the formation and implementation of a Charter Commission and its recommendations could be a multi-year process and that its outcome is uncertain; the Board of Selectmen requests that SCRC's report still address all of the issues in Charges I & II in addition to making a recommendation relative to Charge III.

EXHIBIT H

Copies of the Committee's Meeting
Schedule and Agendas

Salem Charter Reform Committee

Schedule

Meetings begin at 7:00 p.m. and are held in the upper level conference room at town hall unless otherwise noted.

Monday, May 19th

Committee member materials available for pickup in Town Manager's Office

Thursday, May 22nd

Organizational Meeting (Chairman, Vice Chairman, Secretary), Background from Mike Lyons & Jon Sistare.

Thursday, June 16th (changed from original schedule of June 12th)

Meeting with LGC Lawyer regarding Committee Charge and Charter *Amendments* vs. *Revisions*.

Thursday, June 26th

Committee discussion on how it wants to proceed in order to address the BOS charge by the September 22nd deadline within the context of the remaining scheduled meetings.

Thursday, July 10th

Working Meeting

Thursday, July 24th

Working Meeting

Thursday, August 7th

Working Meeting

Thursday, August 20th (changed from original schedule of August 21st)

Working Meeting

Friday, September 5th

Public Hearing (Knightly Meeting Room)

Thursday September 18th

Final Committee Meeting

Monday, September 22nd

Final report presented to Board of Selectmen

SALEM CHARTER REFORM COMMITTEE

A G E N D A

June 16, 2008

7:00 p.m.

*Salem Town Hall
Upper Level Conference Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Presentation by the New Hampshire Local Government Center
2. Discussion/Approval of Bylaws
3. Approval of Minutes
4. Other Business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

June 26, 2008

7:00 p.m.

*Salem Town Hall
Upper Level Conference Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Approval of Minutes
2. Discussion of Current Budget Process.
3. Other Business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

July 10, 2008

7:00 p.m.

*Salem Town Hall
Upper Level Conference Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Approval of minutes
1. Discussion of fiscal year change
2. Continuation of proposed amendments describing budget process
3. Other business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

July 24, 2008

7:00 p.m.

*Salem Town Hall
Upper Level Conference Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Approval of minutes
2. Review and discuss draft Charter amendment describing budget process
3. Discuss bond approval voting threshold
4. Discuss coordination of Town/School District capital projects
5. Other business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

August 7, 2008

7:00 p.m.

*Salem Town Hall
Upper Level Conference Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Approval of minutes
2. Discuss draft Charter amendment describing budget process
3. Discuss bond approval voting threshold
4. Discuss coordination of Town/School District capital projects
5. Other business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

August 20, 2008

6:30 p.m.

*Salem Town Hall
Upper Level Conference Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Approval of minutes
2. Discuss bond approval voting threshold
3. Discuss coordination of Town/School District capital projects
4. Consideration of other changes to the charter
5. Other business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

September 5, 2008

7:00 p.m.

*Salem Town Hall
Knightly Meeting Room
33 Geremonty Drive
Salem, NH 03079*

CALL TO ORDER

1. Public Hearing - Input on Committee Charge from Board of Selectmen
2. Approval of Minutes
3. Discussion - Committee Recommendations
4. Other Business

SALEM CHARTER REFORM COMMITTEE

A G E N D A

September 18, 2008

7:00 p.m.

*Salem Town Hall
Knightly Meeting Room
33 Geremonty Drive
Salem, NH 03079*

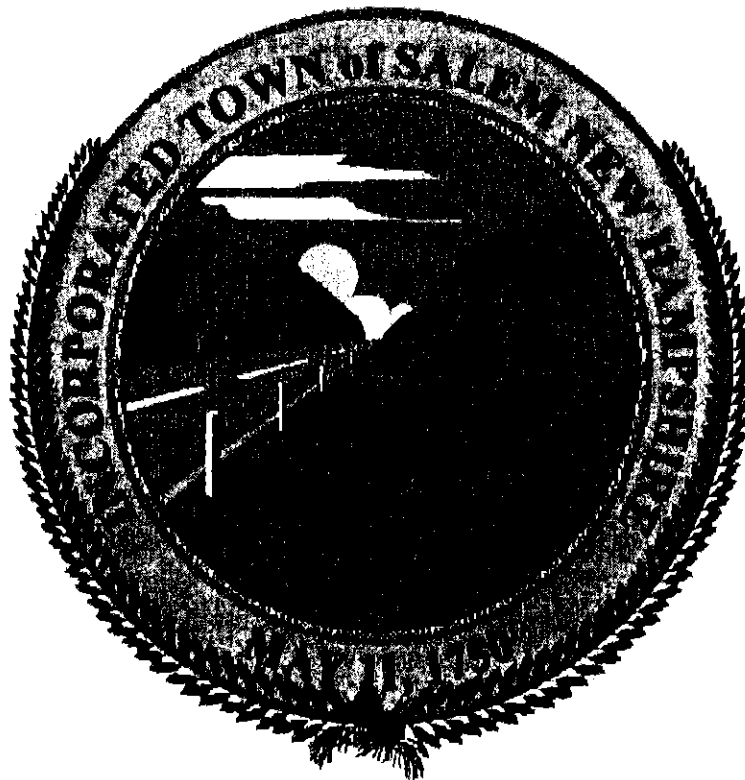
CALL TO ORDER

1. Approval of Minutes
2. Consider and Vote on the Committee's Report and Recommendation
3. Other Business

EXHIBIT I

Salem Charter Reform Committee Bylaws

TOWN OF SALEM, NEW HAMPSHIRE



**CHARTER REFORM COMMITTEE
BYLAWS**

**Charter Reform Committee
Bylaws**

Adopted: May __, 2008

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2. The Chair shall schedule all meetings, assemble the agenda and related materials for all regular and special meetings of the committee, schedule meeting rooms and notify all members of the schedule.
3. The Chair shall execute all documents requiring signature on behalf of the Committee and authenticate by signature, when necessary, all acts, orders and proceedings as directed by vote of the Committee.
4. The Chair may appoint subcommittees. The subcommittees will have such duties as may be assigned to it by a majority vote of the Committee.

B. Vice Chair

1. In the absence of the Chair, the Vice Chair shall preside over and assume all duties and responsibilities of the Chair in addressing the business of any regularly scheduled or special meeting.
2. Assist the Chair in scheduling and coordinating materials for all meetings of the Committee.

C. Secretary

1. The Secretary is the custodian of the official minutes of meetings and shall sign the minutes as approved.
2. The Secretary is the custodian of all correspondence and other documents as may be forwarded to the Committee for review or action.
3. In the absence of the Chair and the Vice Chair, the Secretary shall preside over and assume all duties and responsibilities of the Chair in addressing the business of any meeting.

Section V Responsibilities and Duties of the Committee

- A. The Committee shall undertake and complete the tasks and duties assigned to it in the Charge including those under the subheadings *Committee Charge* and *Additional Direction to the Committee*. The Committee shall work within the time frame established in the Charge.
- B. Members shall act collectively as a body unless authorization is given a member to act as representative and with specific instruction of that body to do so.

Section VI Forfeiture or Removal from Office

- A. Any member who misses three consecutive meetings, unexcused by the Chair, may be removed by the board or committee that appointed or designated such member.

Section VII Conduct of Meetings

- A. General Provisions:
 - 1. All meetings are open to the public unless a majority of Members present vote otherwise, pursuant to RSA 91-A.
 - 2. A schedule of meetings through the date of the Committee's final report stated in the Charge shall be approved at the first meeting by majority vote of the members present. The schedule may be amended by a majority vote of the members present.
- B. Quorum - A quorum shall consist of four members of the Committee.
- C. Role of the Chair – The Chair shall have the following duties, responsibilities and authority in the conduct of Committee meetings:
 - i. Open the meeting at the prescribed time.
 - ii. Announce the business before the Committee in the order in which it is to be acted upon.
 - iii. Recognize members or meeting attendees, entitling such persons to the floor.
 - iv. State and put to vote all questions which are called arise in the course of the proceedings and to announce the result of the vote.
 - v. Protect the Committee from annoyance.
 - vi. Assist in expediting all business in every way compatible with the rights of the members by allowing brief remarks when undebatable Motions are pending or by calling a brief recess to permit restoration of order or for clarification of an obscure point if the Chair deems it advisable.
 - vii. To restrain the members when engaged in public debate.
 - viii. To enforce, on all occasions, the observance of order and decorum among the members or the public, deciding all questions of order (subject to

appeal by any two members) unless the Chair prefers to submit the question for decision of the Committee.

- ix. To inform the Committee on a point of order or practice.
- x. The Chair shall be the last member to vote on every matter brought to a vote of the Committee.

D. Role of the Secretary - The Secretary shall:

- 1. be the recording official of the Committee and shall attend all meetings as scheduled;
- 2. type minutes of the meetings and forward copies to each member pursuant to RSA 91-A;
- 3. forward audio tapes and written notes to the Selectmen's Office upon final approval of the minutes of a meeting; and
- 5. assemble a notebook of approved minutes and other related materials, along with a computer diskette, if available, for permanent record and forward same to the Town Clerk.

E. Rules of Order

- 1. Obtaining the Floor
 - a. A member must address the Chair by title and wait for recognition. When recognized, a member may speak and, generally, no member or meeting attendee may interrupt.
 - b. The Chair may limit debate as may be necessary to avoid repetitive or disruptive discussion or in the interest of keeping with the Committee's strict time schedule.
- 2. Motions - All proposals seeking action by the Committee shall be presented by a formal Motion.
 - a. Motions will be recognized by the Chair and called for a second and vote.
 - b. A second to a motion must be received before the Chair may entertain discussion and vote. If no Second is received, then the motion will be considered to have *died for lack of second* and so recorded.

- c. Motions to table require a second, and will receive no discussion.
 - d. Amendments to a motion may be made by any member at any time after a second to a motion has been received. A second and a vote upon the amendment must be taken before proceeding with the original motion. No more than one amendment to a motion may be entertained by the Committee at any time.
- 3. Votes shall be taken after discussion has reached a conclusion and shall be by raised hand. Votes shall be recorded in the minutes of the meeting as number for, number against, number abstaining.
 - 4. Point of information may be called if a member seeks clarification on any issue before the Committee.
 - 5. Point of order may be called when a member deems a possible violation of procedure or decorum has occurred. The Chair shall rule immediately on any point of order called or request a vote of the Committee.
 - 6. Order of the day may be called when a member determines that the discussion has strayed from the scheduled business of the Committee.
 - 7. Appeal from the Chair may be called by any member who disagrees with a decision rendered by the Chair. If the appeal receives a second, the Chair shall restate the question or issue and request a vote of the Committee to overrule or sustain.
 - 8. Out of order may be called only by the Chair when any member or other meeting attendee is deemed to be unruly and not conducting him or herself according to the these bylaws or proper decorum. The Chair may request that the offending person be removed from the meeting.

SECTION VIII Adoption and Amendment

- A. These bylaws shall be known as the *Charter Reform Committee Bylaws* of the Town of Salem.
- B. These bylaws shall become effective after adoption by majority vote of the Committee.
- C. These bylaws may be amended from time to time by a majority vote of the Committee.

SECTION IX Severability

- A. If any section, subsection, paragraph, sentence, clause or phrase of these bylaws shall be declared invalid for any reason whatsoever, such decision shall not affect the applicability or enforceability of the remaining provisions, which shall remain in full force and effect.

Adopted by Vote of the Charter Reform Committee on this _____ day of _____, 2008.

Signed: _____

Chair, Charter Reform Committee

Recorded for public record on this _____ day of _____ 2008

Signed: _____
Susan Wall, Town Clerk

Date

EXHIBIT J

The Municipal Charter Process for Towns
by the Local Government Center

THE MUNICIPAL CHARTER PROCESS FOR TOWNS

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

Part I, 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, II, 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

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 49-B: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-D: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 coterminus 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, I 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, II)

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.

EXHIBIT K

**Copies of The Eagle Tribune Articles and
Editorials covering Committee Activities**

The Eagle-Tribune

online



Salem to form charter reform panel

By Gordon Fraser
Staff writer

April 15, 2008 05:15 am

SALEM — Selectmen agreed last night to establish the Charter Reform Committee; they just didn't agree on what that committee will do.

By a vote of 5-0, the town's highest board decided to set up a seven-member committee, which will spend the summer examining Salem's governing document.

Although the selectmen floated plenty of ideas about what the committee's job might be, the board decided to wait two weeks before giving it a specific mandate.

"We can't send them out in the field and say, 'Find me a four-leaf clover,'" said Selectman Patrick Hargreaves, explaining that the group needs a clear mission.

Calls for a charter committee were prompted a week ago, in part, by questions about Salem's Budget Committee.

Concerns about the budget panel's legal authority came to light April 7, when Town Manager Jonathan Sistare said he discovered that state law technically might not allow a town such as Salem to have a budget committee.

The town has traditionally had a budget panel, including under the current charter approved by voters in 1998.

Since Sistare's announcement, the selectmen have been searching for ways to allow the Budget Committee to continue its work. The move to establish the Charter Reform Committee is part of that push.

But Sistare cautioned that the state Department of Revenue Administration will likely issue advice within the next two weeks about dealing with the town's legal quandary, and the selectmen decided to wait before issuing a specific mandate to the new panel.

But even if questions about the Budget Committee are resolved, the Charter Reform Committee will still likely meet to deal with other issues.

"We have serious infrastructure problems that we're not addressing," said Selectman Michael Lyons, who wants the committee to consider changing the rules for adopting a bond article or a big purchase

involving a loan.

Right now, voters need to approve a loan by a two-thirds majority. Lyons said he thinks the town should only need a three-fifths majority.

Beyond that, several selectmen think the Charter Reform Committee should look at whether the current form of government works at all.

While there isn't much support for the idea of turning Salem into a city — at least three selectmen expressed reluctance to that idea — it could still adopt a town council-style government such as Derry.

Under that form of government, a number of spending decisions are decided by elected officials instead of by voters at Town Meeting.

The Salem Charter Reform Committee will be made up of three residents and a representative from each of four town boards: the Board of Selectmen, the Budget Committee, the School Board and the Capital Improvements Committee.

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The Eagle-Tribune

online



Our view: Charter review is a useful exercise

April 18, 2008 07:14 am

The people of Salem, N.H., are about to embark on a useful exercise: a review of their form of government.

The current town charter is 10 years old. Much has changed in Salem in the past 10 years. Does the current form of government, featuring a town manager who reports to the Board of Selectmen, still serve the public interest? Should Salem be a city? There are questions about the legal standing of Salem's Budget Committee. How can the town establish beyond question that its Budget Committee is valid? How large of a super-majority should it take to allow the town to borrow to fund its needs?

All useful questions. To help answer them, selectmen voted earlier this week to establish the Charter Reform Committee. The selectmen have not yet given the committee a mandate. They're waiting for an opinion from the Department of Revenue on the status of the Budget Committee before issuing their instructions on charter reform.

Resolving the legal status of the Budget Committee is an important consideration. But looking at charter reform should go beyond that.

The selectmen should give the Charter Reform Committee the broadest possible mandate. Encourage the committee to look into how every aspect of Salem government could be improved. What would it mean for Salem residents if their town were to become a city? What are the advantages of a town council over a board of selectmen. Let's find out. Let's have a detailed report that lists the pros and cons of each form of government.

Any decision on charter change will have to be made by the residents. Let's give residents all the information they need to make the best choice for Salem's future.

Self-examination is always a useful exercise. It helps to recognize one's faults as well as one's strengths. Giving the Charter Reform Committee a mandate to look at all options will help Salem residents decide what they should change and what they should preserve. It has been 10 years since the last charter revision in Salem. It's time for another look.

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The Eagle-Tribune

online



Eight residents want seat on Charter Reform Committee

By Gordon Fraser
Staff writer

May 10, 2008 12:10 am

SALEM, N.H. — Eight residents have applied to join a special committee that will study the town's governing document this summer, according to Town Manager Jonathan Sistare.

The deadline for committee volunteers was Thursday, Sistare said, and eight applicants are vying for three positions on the seven-member committee.

The other four committee members will be pulled from town panels, like the Board of Selectmen and Budget Committee. Selectman Michael Lyons is slated to sit on the committee.

Selectmen will interview the applicants Monday and decide between them.

Calls for a Charter Reform Committee began in April, after the selectmen learned about problems with the Budget Committee's legal mandate.

Sistare, who is an attorney, discovered state law technically might not allow a town like Salem to have a budget panel. Legal opinions disagree, but state legislators are working to clear up any confusion.

In the meantime, calls for a Charter Reform Committee remain. Selectmen hope the committee will advise them on whether the town's 10-year-old governing document needs an overhaul.

Even before its formation, the charter panel has come under fire. Some residents, like Paul Metcalf, argue the town should only review the charter with an explicit mandate from voters at Town Meeting.

Selectmen said they will approach voters if the Charter Reform Committee recommends major changes.

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Salem Charter Reform Committee appointments made

By Gordon Fraser
Staff writer

May 15, 2008 04:30 am

SALEM — The town's new Charter Reform Committee has taken shape.

The group, which will begin meeting soon and deliver a report in late summer, is looking at whether the town's 10-year-old governing document is working well, needs amendments or could use a major overhaul.

Any changes would have to be approved by voters at Town Meeting.

The seven committee members — drawn from the community and from four town boards — have been appointed over recent weeks. Last night, the School Board was the last town panel to appoint its representative, Pamela Berry, to the charter group.

The night before, the selectmen appointed three members at large from the community. One of those members, Barbara Lessard, is the former town clerk.

Calls for a Charter Reform Committee began in April, after the selectmen learned about problems with the Budget Committee's legal mandate.

Town Manager Jonathan Sistare, who is an attorney, discovered state law technically might not allow a town like Salem to have a budget panel. Legal opinions disagree, but state legislators are working to clear up the confusion.

In the meantime, the selectmen hope the Charter Reform Committee will advise them on whether the town's 10-year-old governing document needs an overhaul.

The idea hasn't been without controversy, though.

Some residents, like Paul Metcalf, argue the town should only review the charter with an explicit mandate from voters at Town Meeting.

And resident Ron Giordano — a frequent critic of the selectmen and advocate of changing Salem's form of government — was irked that the selectmen didn't appoint him to one of the positions on the charter committee.

Giordano was one of 10 applicants for three at-large positions on the committee. Planning Board

Chairman Jim Keller's application to be on the committee also was rejected by the selectmen.

The Charter Reform Committee

Barbara Lessard, resident

Russell Frydryck, resident

Dan Norris, resident

Michael Lyons, selectman

Michael Carney, Budget Committee

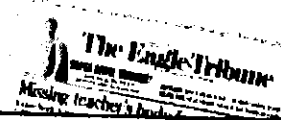
Brian Keaveny, Capital Improvements Plan Committee

Pamela Berry, School Board

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The Eagle-Tribune

online



New charter committee has a full plate

By Gordon Fraser
Staff writer

May 26, 2008 05:55 am

SALEM — The town's special Charter Reform Committee met for the first time Thursday and the panel's new chairman thinks they could already face a time crunch in getting a report prepared by September.

"We're going to very quickly need to move on to addressing the specific requests (of selectmen)," Chairman Dan Norris said. "We don't have the luxury of time."

That's because the Charter Reform Committee, first conceived in April, only has until Sept. 22 to deliver a report addressing elements of the town's governing documents.

Despite the time crunch, Norris said the seven-member panel is up to the challenge. Beyond that, Norris said he was looking to all board members to approach possible changes impartially and without prejudgment.

"My expectation is that each one of these committee members is bringing an open mind to the committee," he said.

The Charter Reform Committee was first proposed after Town Manager Jonathan Sistare, who is an attorney, discovered state law technically might not allow a town like Salem to have a Budget Committee.

While legal opinions disagree, and state legislators are working to clear up the confusion, selectmen decided it would be a good time to look at the town's charter as a whole.

The special committee is charged with looking at whether minor changes should be made to the charter: for example allowing the town to approve loans with only a 3/5 Town Meeting vote instead of a 2/3 vote, or allowing the town and school to coordinate and take turns proposing major projects.

The Charter Reform Committee will make a recommendation about whether the town should completely overhaul the charter, a move that would require a special Charter Commission and a vote at Town Meeting.

Selectman Michael Lyons, who sits on the Charter Reform Committee, said the consensus Thursday was that the panel wouldn't consider major changes until it addressed other, less drastic possibilities.

"I kind of walked out of there (Thursday) night thinking, 'This was definitely the right decision' (to form a charter panel), because we need a lot of digging, a lot of comprehensive discussion," Lyons said.

The concept of a charter review hasn't been entirely without controversy.

Some residents, like Paul Metcalf, have argued the town should only review the charter with an explicit mandate from voters at Town Meeting.

The panel's next meeting is tentatively scheduled for June 16 in the upper conference room of Town Hall at 7 p.m. The date and time might change, however, depending on the schedule of a Local Government Center representative who is slated to speak at the meeting, according to Sistare.

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Fewer votes may be needed for bond approval Reform committee weighs lowering approval percentage

By James A. Kimble
Staff writer

June 20, 2008 06:00 am

SALEM — Plans for a new police station and bridge repairs have lacked the needed votes by margins large and small in recent years.

Supporters have often lamented that the hurdle of winning 66 percent voter approval during March elections is too high.

That could change if the Charter Reform Committee suggests Salem would operate better by lowering approval for bond projects from 66 percent to 60 percent.

It's one of three topics selectmen asked the new committee to review. The committee also is studying whether to change Salem's fiscal calendar and whether the town needs to undergo the multiyear process of revamping its charter.

Selectman Michael Lyons said he proposed looking at the voter-approval percentage.

"My thought process has been for quite a while that we need a super majority for taking on debt, I think that is noble," Lyons said. "As far as the specific number is concerned, what makes 66 (percent) more noble than 60?"

He said a history of town projects that either failed or had near misses at the polls justified the review, but he wanted an independent committee to vet the idea.

In 2005, a road project passed by just seven votes. A proposal in 2006 to revamp four bridges in town failed by 14 votes, according to Lyons.

Salem has twice failed to gain voter approval to build a new police station, once in 2002 and again in March.

A lower threshold of voters wouldn't have helped the police station in the last election. Only 54 percent of voters were in favor of the new \$7 million station.

Reform Committee Chairman Dan Norris said whatever recommendations the committee makes, either selectmen or a group of registered voters would have to put them before voters in March.

The committee can only suggest minor changes to Salem's charter, Norris said. A more in-depth recalibrating of town government would only be initiated by a voter-approved charter commission.

Norris said if the panel recommends a 60 percent voter majority for major projects, it is uncertain how much it could help projects get approved.

"Some of the recent projects that failed would not have passed even with the lower threshold," Norris said. "It's not a significant difference (of votes), but it could be for a particular project."

Norris said the committee also will study whether Salem's budget process needs to begin in the spring, instead of beginning in January.

"Our committee is really going to be focused on the level of detail, and the mechanics of the budget process," Norris said.

He said the reform committee met for the first time on Monday. At that meeting, lawyers from the Local Government Center briefed the panel on the history of town government in New Hampshire and the variety of charters now used in the state.

Norris said it's unclear whether the reform committee will have time to decide whether Salem should pursue forming a charter commission, a multiyear process that needs voter approval. The committee's report is due to selectmen in September.

Aside from the voter percentage issue, selectmen want committee members to consider ways in which the town and school system can work together to get capital projects to pass the muster of voters, said Lyons, a member of the committee.

One concern among school and town officials over the years has been that capital projects compete for approval. In March, Salem voters had to consider the \$7 million police station plan and another \$1.5 million to plan for a high school expansion. Both proposals failed.

Town Manager Jonathan Sistare said towns often find themselves in the quandary of presenting capital projects while schools are doing the same.

"This isn't just a Salem-type of problem, it's an everywhere-in-New Hampshire problem, where school systems and municipalities compete for tax dollars," Sistare said. "Both schools and towns have viable and important projects. So the more we can work together to present it, the better."

Sistare said capturing a two-thirds majority is an even more daunting task in places like Salem, where the traditional Town Meeting has been replaced by the Senate-Bill 2 format. Under that system, Sistare said, town officials miss opportunities "to sway people at oral arguments at a typical town meeting."

Lyons said even though he backs the idea of reducing the super majority vote, he wants the committee to decide.

"I think selectmen have the authority to change this on our own," he said. "We could do it this coming Monday night, but my opinion could be tempered by others and a decision of this magnitude should have some cross-pollination of opinions."

Norris said the committee meets again June 26, and will hold two meetings a month through the

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Our view: Borrowing should be tough, not impossible

June 26, 2008 09:25 am

New Hampshire taxpayers are famously thrifty. Long experience has taught them the virtue of making it difficult for government to spend their money.

Difficult is one thing. Impossible is another.

In Salem, N.H., as in many other New Hampshire communities, a simple majority vote of 50-percent-plus-one is not enough to authorize town government to borrow to pay for projects such as new schools or roads. Many communities require a supermajority, a higher threshold for approval. In Salem, a proposal to issue bonds to fund a project must receive 66 percent of the vote to pass.

Among the issues being considered by the Charter Reform Committee is whether that threshold should be lowered to 60 percent. It's an idea worth the public's consideration.

A 66-percent supermajority is almost an impossible hurdle to overcome. It requires winning virtually two-thirds of the votes cast. Is it right that two-thirds of the voters of Salem must agree before any project can go forward? The 60-percent threshold is still formidable. But at least it gives projects a fighting chance.

In recent years, a number of proposed capital projects have failed to win enough votes to pass. A new police station has twice failed to meet the supermajority requirement. In March, the \$7 million proposal won 54 percent of the vote. A few years earlier, the station received 55 percent.

It's worth noting that the police station project would have failed under the 60-percent supermajority as well. But other projects have been much closer.

According to Selectman Michael Lyons, a road project in 2005 passed by just seven votes. In 2006, a plan to revamp four bridges failed by 14 votes. Now the town is forced to reroute heavy traffic around two bridges that still need repair.

"My thought process has been for quite a while that we need a supermajority for taking on debt, I think that is noble," Lyons told reporter James Kimble. "As far as the specific number is concerned, what makes 66 (percent) more noble than 60?"

Changing the percentage of the vote needed to pass a bond issue would not require a full rewrite of the town charter. Lyons said the selectmen could make the change on their own but he wants to hear residents' opinions. The reform committee will meet throughout the summer and a public hearing will be held Sept. 5.

It should be difficult for the town to take on debt, but not impossible. Some of these capital projects are vital to Salem's economic health and public safety. A 60-percent majority would be a more reasonable requirement.

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The Eagle-Tribune

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Special tax districts gain support from town officials

By James A. Kimble
Staff writer

August 13, 2008 03:03 am

SALEM — Two proposals now being studied by town officials could change how large projects — such as a new police station or a sewer project — are financed or approved.

Supporters for creating tax-increment finance districts within three areas of town see it as a vehicle for funding projects that have failed to gain support at the polls in years past.

Officials are considering Salem Depot, Route 28 and a nearby industrial park as potential TIF districts. Once the districts are established, subsequent tax increases for TIF district properties would be set aside for infrastructure improvements in the area.

For example, take a property being taxed at \$2,000 a year when the TIF district is established. If the tax bill for that property rises to \$2,300 the next year, \$300 would be set aside for infrastructure improvements.

"I'm anxious to see if this could be used as a tool that could improve an area," Selectman Michael Lyons said.

The proposal is gaining broad support from selectmen and Planning Board members. Town staff members are developing a proposal that could go before voters next March.

It's not the only plan in the works that could change the way Salem decides spending on capital projects.

The Charter Reform Committee is considering whether to change the town's policy that requires a two-thirds majority to approve big-dollar projects.

Town officials have placed some of the blame for the crumbling infrastructure on the need to get approval from 67 percent of the voters, a super-majority. Committee members may recommend revising the Town Charter so only 60 percent voter approval would be needed.

Committee Chairman Daniel Norris said the group has just begun talks about changing the needed vote for major projects. He said the committee will hold a public hearing on its proposals Sept. 5.

If Salem voters decided to create TIF districts next March, they wouldn't be the first to try it out. It's a method already being used in Derry and Goffstown.

Christopher Goodnow, a commercial real estate consultant in Salem, said property owners generally favor increment districts for the same reasons town officials do.

"I can't speak to a specific proposal (in Salem), but the TIF idea is an interesting one because it doesn't burden existing taxpayers, but creates tax revenue," Goodnow said. "Derry has had substantive success off Ashleigh Drive. Clearly, the concept could have some real merit."

Lyons said he envisions a TIF district enabling the town to set aside enough new tax dollars to pay the entire cost of projects that have been long on the books, but could never win enough support at the polls. He is a member of the committee and favors lowering the percentage of voter approval required.

He cited the west side interceptor, a \$3.74 million sewer project, once proposed to expand sewerage to the west of Interstate 93 as a project that could be fully funded by TIF backing. That project failed in 2001 to get the two-thirds voter approval, despite getting a \$1.5 million federal grant to help pay for the work.

The Route 28/Main Street intersection within the old Depot could be another benefactor from having a TIF designation, he said.

"As a selectman, I don't hide from the concept that I'm pursuing a strategy by which — where appropriate — we should be able to take on debt for worthy projects and replace infrastructure," he said. "And at same time, it alleviates any burden on taxpayers. We should be doing that as well."

One concern, even among supporters, has been whether Salem could end up overtaxing businesses and developments with a series of fees already in place.

Salem already requires developers to pay an impact fee to cover increased demands on public safety, 57 cents per square foot. A road impact fee for developments along Route 28 is up to \$3 per square foot.

"Some people would argue, 'Hey, that's enough. We don't need to do more. We don't want to discourage people from doing business here,'" Town Planner Ross Moldoff said.

But Moldoff said many large businesses come to town offering to make substantial improvements to their surrounding area.

Developers for a Lowe's store now being considered along the Methuen town line are promising \$2 million in road improvements, while still paying \$51,000 in impact fees, Moldoff said.

"Some people would say in a down economy, be realistic," he said. "Others say, 'Hey, people want to be here.' I could see a concern among some here in the community to make sure you don't go too far in terms of what's reasonable and rational. Where TIF fits into that I have no idea."

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EXHIBIT L

Proposed Budget Process Charter Amendment

VI. Finance

VI-1 FISCAL YEAR

The fiscal year of the Town shall begin on the first day (1st) of January and end on the thirty-first day (31st) of December.

VI-2 MUNICIPAL BUDGET COMMITTEE

The Town of Salem has approved a Municipal Budget Committee as set forth under RSA:32 to assist voters in the prudent appropriation of public funds. The Municipal Budget Committee's duties shall include but not be limited to the following:

- A) Review proposed budget request from the Selectmen.
- B) Review expected revenue estimates for the Town.
- C) Prepare the budget as provided in RSA 32:5 for submission to the annual or special meeting of the voters.
- D) To forward copies of the final budget to the Town Clerk as required by RSA 32:5, VI and, in addition, to deliver two(2) copies of such budget and recommendations upon special warrant articles to the governing body at least twenty(20) days before the date set for the annual or special meeting, to be posted with the warrant.

VI-3 PREPARATION OF ANNUAL BUDGET

At such time as may be requested by the Town Manager, each department manager shall submit an itemized estimate of the expenditures and any revenues for the next fiscal year for the department(s) or activities under their control to the Town Manager. The Town Manager shall, based upon these estimates and other data, prepare a recommended budget which shall, together with the department estimates, be submitted to the Board of Selectmen on such a date as the Board of Selectmen shall establish. In presenting the budget to the Board of Selectmen, the Town Manager shall also include a detailed report of estimated revenues other than those to be derived from real estate taxes. The Town Manager shall also present an estimated impact of the budget on the Town portion of the tax rate. The Board of Selectmen shall review the proposed budget for the following fiscal year and make such modifications and amendments as it desires. The Board of Selectmen shall present a proposed budget to the Municipal Budget Committee for its review no later than October 1st.

VI-4 Budget Hearings

The Municipal Budget Committee shall hold in convenient places as many public meetings on the budget as it deems necessary. Pursuant to RSA 32:5, it shall hold at least one (1) public hearing on the budget, not later than twenty-five (25) days before each annual or special meeting, public notice shall be given at least seven (7) days in advance, and after the conclusion of public testimony shall finalize the budget to be submitted to the annual meeting (as outlined in section VI-2). Notice of any public hearing shall be posted in at least two (2) public places. A copy of the proposed budget shall be available to the public at the office of the Town manager during regular business hours.

VI-5 Final Date for Budget Adoption

- A) The warrant for the annual meeting shall prescribe the place, day and hour of the sessions of the meeting, and notice shall be given in accordance with State Law. The annual town meeting shall consist of three sessions; a first open session, an election and official ballot session and a final open session.
- B) The first session of the Annual Meeting shall be held between the first and second Saturdays, inclusive, after the last Monday in January. This session shall have the authority to explain, discuss, debate and amend only those articles listed under Section IV of this charter which shall be placed on the official ballot, except the wording prescribed by statute shall not be subject to amendment. Motions to restrict reconsideration at the first session shall prohibit further action on restricted articles until the official ballot session. All articles submitted to the first session shall be placed upon the official ballot. Any official ballot article that the first open session has not acted upon before the second Monday in February shall be placed upon the ballot in its original form.
- C) The second session of the Annual Meeting shall be held on the second Tuesday of March to elect, by official ballot officers of the Town and to act upon questions by law to be inserted on said official ballot, such articles for bonds and notes as may be presented and to vote on all appropriation warrant articles from the first session. The second session shall be deemed the annual election date for purposes of all applicable election statutes. Voting at the election and official ballot session shall conform to the procedures of general law for town elections, including requirements pertaining to absentee voting, polling places and polling hours.

- D) The third session shall commence on the first Saturday after the second Tuesday in March. The open session may consider any article not required to be acted upon by the official ballot session, including, without limitation, articles to appropriate funds for any identified purpose, and petition warrant articles that Section IV does not require on the official ballot. The open session shall adopt an operating budget if it was not adopted by the official ballot session. This session may not reconsider any other actions of the official ballot.
- E) The Town Clerk shall prepare the official ballot, which may be separate from the official ballot used to elect officers, for all warrant articles. Wording shall be substantively the same as the main motion, as it was made or amended at the first session, with only such minor textural changes as may be required to cast the motion in the form of a question to voters.
- F) "Operating Budget" as used in this Charter means a statement of recommended appropriations and anticipated revenues as submitted to the Annual Meeting as an attachment to, and as part of the warrant for, an annual or special meeting, exclusive of "special warrant articles", as defined in RSA 32:3, VI.
- G) Warrant articles concerning the issuance of bonds shall be placed on the official ballot for approval of the voters and shall require a 2/3 majority for passage. Only votes in the affirmative or negative shall be included in the calculation of any majority. The Municipal Budget Committee shall hold at least one(1) public hearing in accordance with RSA 33:8-a. Said hearing shall be held at least 15 days, but not more than 60 days prior to the meeting, or adjourned session thereof, at which the bond or note issued is to be voted upon. Days shall be counted in accordance with RSA 21:35. Notice of the time, place and subject of such hearing shall be posted in at least two(2) public places and be published in a newspaper of general circulation in the municipality at least 7 days before it is held.
- H) The Board of Selectmen may make emergency expenditures in accordance with the provisions of New Hampshire Municipal Budget Law (RSA 32).

VI-6 BORROWING PROCEDURES

A. The Board of Selectmen, subject to the applicable provisions of New Hampshire State Law may authorize by resolution the borrowing of money for any purpose within the scope of the powers vested in the Town and the issuance of bonds of the Town or other evidence of indebtedness therefore and may pledge the full faith, credit, and resources of the Town for payment on the obligation created hereby; provided that no notes or bonds shall be issued by the Board of Selectmen except by a vote of three(3) Selectmen and a vote at a regular or special Town meeting as provided by section VI-4 of this charter. Notification and posting of such bond issues shall be in the same manner as if it were a bond issue of a town pursuant to RSA 33, with voting by official ballot at a regular or special Town meeting.

B. The Board of Selectmen may borrow in anticipation of taxes.

VI-7 LAPSE OF APPROPRIATIONS

All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, except as provide under RSA 32:7.

VI-8 QUARTERLY BUDGET REPORTS

Quarterly, or more often if required by the Board of Selectmen, the Town Manager or his designee shall submit to the Board of Selectmen reports showing the relation between the estimated and actual income and expenses to date, together with outstanding indebtedness and estimated future expenses, anticipated transfers, and any other major variances to the operating budget, active and anticipated risks to the Town which may impact the operating budget.

VI-9 TRANSFER OF APPROPRIATIONS

The head of any department with the approval the Town Manager may transfer any unspent balance or any portion thereof from one (1) fund within his department to another fund within his department. The Town Manager with the approval of the Board of Selectmen may transfer any unspent balance or any portion thereof from one (1) department to another. All funds appropriated under a special warrant article may be used only for the purpose specified in that article and shall not be transferred. All transfers will be conducted as allowed under RSA 32:10.

VI-10 CAPITAL IMPROVEMENTS PROGRAM

A) Capital Improvements Program Committee

In accordance with RSA674:5, the Town has established a Capital Improvement Program Committee consisting of voting members comprised as follows:

1. One(1) member named and appointed by and from the Board of Selectmen
2. One(1) member named and appointed by and from the Municipal Budget Committee
3. Two(2) members named and appointed by and from the Planning Board
4. Two(2) members of the public appointed by the Board of Selectmen

The following staff members shall provide on-going support and assistance to the Committee's efforts as determined and required by the Committee:

- 1) The Town's Community Development Director
- 2) The Town's Finance Director
- 3) The Town's Planning Director

B) The Capital Improvements Program Committee shall meet not less than four(4) times per year to fulfill its duties as set forth by RSA 674:5-8. The committee shall prepare a Capital Improvements Plan which shall consist of:

1. A list and recommended prioritization of all capital improvements, including major replacements which are proposed to be undertaken over a period of the next ten(10) fiscal years, including but not limited to roads, equipment, sewer and water operations, new facilities, major improvements to existing facilities, recreational lands/facilities with appropriate supporting information as for the necessity for such improvements.
2. Cost estimates, methods for financing and recommended time schedule for each such improvement; and
3. The estimated annual costs of operating and maintaining the facilities to be replaced, constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

- C) The Capital Improvements Program Committee shall submit a Capital Improvements Plan to the Board of Selectmen and the Municipal Budget Committee. The Board of Selectmen shall hold at least one(1) public hearing on the proposed plan. Such portions of the plan as deemed appropriate by the Board of Selectmen shall be included in the budget presented to the Municipal Budget Committee. A summary of the plan shall be included in the Town's Annual Report.

EXHIBIT M

Community Development Notes
on Change of Fiscal Year

Fiscal Year – The July to June advantages – Community Development

1. **Schools:** Aligns with School fiscal year. This allows a better alignment of the CIP and does not place either jurisdiction in a position of being before or after. Tax bills, Town Meetings, Budget Meetings, Planning Board goals, grants, and other process issues will all be within the context of one fiscal year across both the municipal and schools budget process. This also lessens the possible confusion for the general public.
2. **Timing:** The key milestones of the January to December fiscal year are often during periods in which the public is less available. The peak of the budget season and when we should be holding public outreach is the during winter holidays. A July fiscal year places the Town meeting in May and the primary dialogue in January to April. Public informational meetings during the holidays are normally sparsely attended. The July to June fiscal year would also place the beginning of the fiscal year, the time with the least amount of need for outreach, during many residents' summer vacation periods.
3. **Projects without a Budget:** In the January to December fiscal year many of the warrant article based projects such as construction or project engineering wait until the funds are available at the end of the first quarter. The perception of a one year project is January to December; the reality is April to April. This always places project in the position of carrying over funds.
4. **Road Repairs:** The road maintenance program from year to year is at times determined by a review of the roadways in late spring. The January to December fiscal year town meetings are too early for this assessment. A July to June fiscal year allows the road condition assessment to occur in the spring thus developing a more responsive road repair list prior to Town Meeting in May.
5. **Federal Fiscal Year:** The Federal fiscal year begins in October. Most grant announcements are between October and February. A January to December fiscal year does not allow time to develop application and the warrant article for a match. Under the January to December fiscal year with Town Meeting in March of the following Federal fiscal year the match is requested several months after an award. Under the July to June fiscal year the match can be requested in May of the same Federal fiscal year as the grant round and possibly approved prior to the application due date. Having the match request vote within the same fiscal year as the application due date places project schedules and grant in a more competitive position.

EXHIBIT N

Barbara Lessard
Bond Threshold Presentation

My position is that we should not change the requirement for passing bond articles from a 2/3 vote to a 3/5 vote. I do not believe that there is a compelling reason to make this change.

I believe that the reason we have always required the 2/3 vote was because going into long term debt should require a "super" majority. This practice has always been the case as far as anyone can remember in Salem and is also the practice in private business. Non-bond articles commit the town for only one year; bond articles are usually a 10-20 year commitment. Once the bond is passed, the tax rate for the ensuing years is permanently impacted, regardless of possible tough economic times. If the town cannot convince the public that this kind of large expenditure is necessary then it should not pass and tie the hands of future voters that might find themselves in difficult economic times.

The main reason to lower the threshold is to "theoretically" make it easier to pass future bond articles. I say "theoretically" because I do not believe that this is necessarily so. Studying past history, some bonds would have passed with the 3/5 majority and others still would have not. This could have been attributable to many reasons, depending on the year. A real in-depth study might show that perhaps it was due to a particular years' economic situation.

If the Board of Selectmen decide that they want to change this percentage it could very well be perceived by the voters as trying to circumvent their will and could possibly have a negative impact on other articles as well. If the voters really want this to be the rule it should come in as a citizens petition to avoid the appearance of "sour grapes" on the part of the selectmen.

The Board of Selectmen and the School Board should work very hard in keeping the overall general budget low and be very selective as to how many bonds they will be presenting before the voters. If this is done, I believe that the voters will see that their elected officials are concerned about their taxes and may very well react positively to these much needed projects. The voters need to know that their voices have been heard.

My recommendation would be that, rather than change the super majority, the Boards do a better job of presenting their arguments for their projects. I would highly recommend that a flyer be sent to each household before the election that specifically tells the voters the need, the total cost of the project and the tax impact for the life of the bond. I would not include any other information in this pamphlet other than the bond article information.

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EXHIBIT O

Russell Frydryck
Bond Threshold Presentation

FINDINGS IN SUPPORT OF A 3/5 BOND SUPER MAJORITY

I. COMMITTEE CHARGE

Charge 1-c of the Salem Charter Reform Committee asked for recommendations on "The changing of the criteria for a bond passage for the town from 2/3 to 3/5." This report will present findings and information in support of a change to a 3/5's super majority.

II. HISTORICAL BACKGROUND

Prior to 1998, the Town of Salem operated using the Town Meeting form of government. This form of government has a long and rich tradition of being highly democratic stretching back to the ancient Greeks. Under this form of government, bond articles were presented, discussed, amended and voted upon in the deliberative session. A bond warrant required a super majority of 2/3 of those present to pass.

In 1998, the Town of Salem amended it's charter to a hybrid Town Meeting / Official Ballot form of governance as allowed under RSA 49-D.3, II-a. This change was made with the best of intentions, specifically to allow greater participation of the citizens of Salem in the governance process. Salem realized, like the ancient Greeks, that the town meeting form of government became ineffective when the electorate grew too large.

Under this amended charter, certain items were to be decided by official ballot rather than at town meeting. Included, as one of these items was "Bond articles and issuance of debt". RSA 49-D.3, IIa stipulates, "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." The charter for the Town of Salem is mute in this respect and as such the bond passage super majority is set at 2/3.

III. LOCAL PRECEDENT

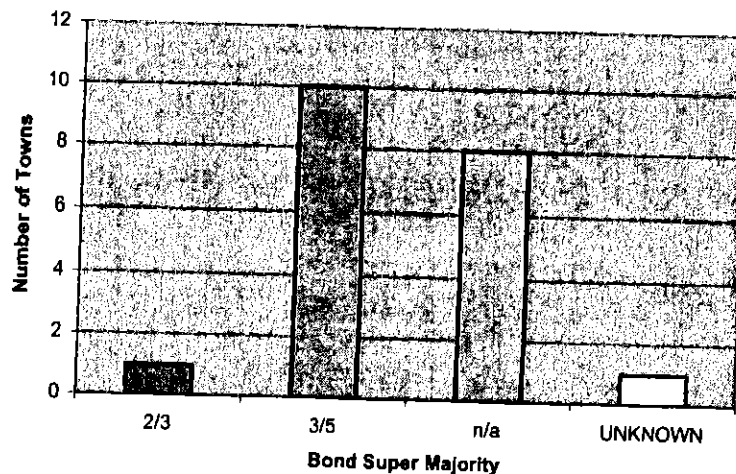
One approach to determining the applicability of a 3/5 bond super majority is to examine the voting procedures of Salem's local contemporaries. While it is not required or necessarily preferable for Salem to govern in the same manner as its contemporaries it is nonetheless informative to see if there are any trends.

A survey of twenty (20) towns with valuations similar to Salem's is shown in the Table below.

Name of Municipality	Town Valuation	Type Of Govt	Bond Super Majority
RYE	1,606,142,300	SB2	3/5
AMHERST	1,511,571,400	SB2	3/5
MEREDITH	1,918,289,283	SB2	3/5
KEENE	1,983,303,000	Council	n/a
WOLFEBORO	2,048,628,792	Town	3/5
LACONIA	2,160,722,703	Council	n/a
WINDHAM	2,206,042,525	SB2	3/5
ROCHESTER	2,315,298,140	Council	n/a
HAMPTON	2,401,248,200	SB2	3/5
SEABROOK	2,410,814,500	Town	3/5
DOVER	2,835,069,000	Council	n/a
HUDSON	2,855,460,415	SB2	3/5
MOULTONBOROUGH	2,886,389,533	Could Not Find	Could Not Find
DERRY	2,979,487,832	Council	n/a
BEDFORD	3,117,004,593	Council	n/a
MERRIMACK	3,191,765,803	SB2	3/5
LONDONDERRY	3,310,852,213	Town	3/5
PORTSMOUTH	3,730,985,415	Council	n/a
CONCORD	4,198,794,008	Council	n/a

Illustrated graphically below, eight (8) of these towns have a Council form of government and therefore do not have a bond super majority, ten (10) have either a Hybrid Town Meeting or SB 2 form of government and exercise a 3/5 bond super majority and only one (1), Salem, utilizes a 2/3 bond super majority. It should be noted that at the time that this was written, data for Moultonborough could not be obtained so it is listed as unknown.

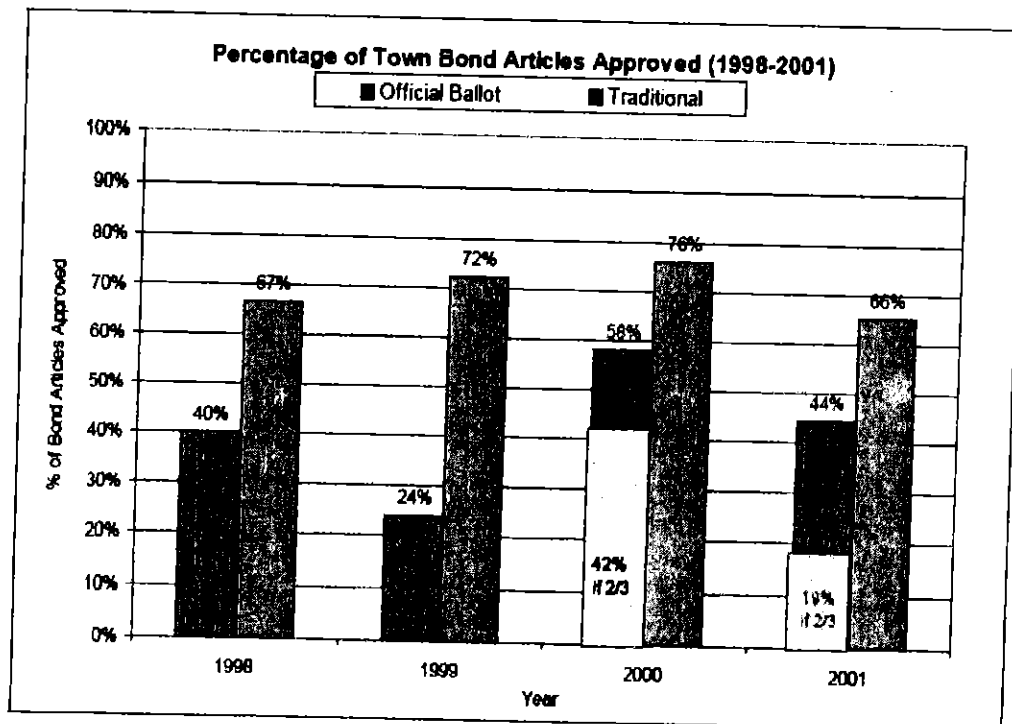
Bond Super Majority of Salem Contemporaries



IV. STATISTICAL STUDIES

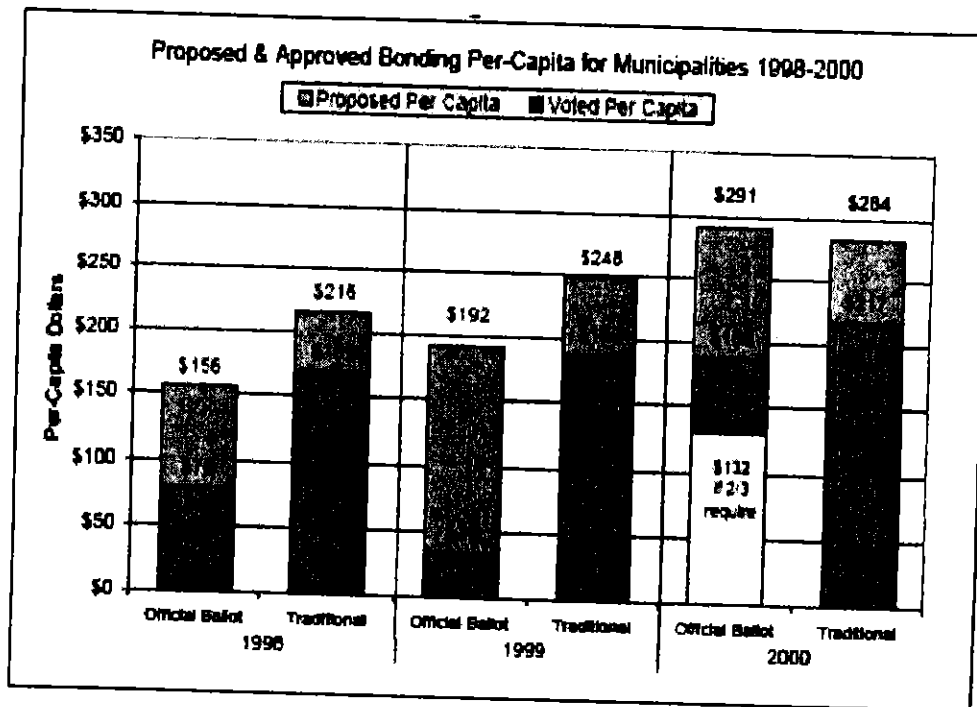
Senate Bill 2 (referred to as SB 2) was initially introduced in 1995 as an Official Ballot alternative to the Traditional Town Meeting. This was one possible remedy to the problems posed to the Town Meeting form of government by increasing populations. Initially, SB 2 stipulated a bond super majority of 2/3. After a few years under this type of governance it became evident that bond passage was sharply down in towns operating under SB 2. To balance this inequality, state legislature revised the SB 2 bond super majority to 3/5 in late 1999. Because of this, we have available a wealth of statistical data regarding the effects of 2/3 vs. 3/5 bond super majorities.

The chart below shows the percentage of bond articles passed in both Official Ballot (SB 2) towns and Traditional Town Meeting towns. It is evident from this chart that for the years when the SB 2 super majority was 2/3 (1998 and 1999), the rate of bond passage was significantly lower than that of traditional Town Meeting towns even though both required a super majority of 2/3. In the following years, when the SB 2 super majority was modified to 3/5, the bond passage rate for the SB 2 towns began to approach that of the traditional town meeting towns. One can extrapolate from this data that adjusting the super majority brought the SB 2 towns in line with the Town Meeting towns. *In other words, when bond passage is decided by official ballot, a 3/5 super majority recaptures the traditional values of the New Hampshire town meeting.*



One could argue that there are other reasons as to why this data shows that 3/5 is the right super majority for official ballot towns. One possibility could be the value of proposed bonds was so high that voters disapproved them all. The evidence does not bear this argument out however. The chart below shows that

even though the proposed bond values were lower in the SB 2 towns in 1998 and 1999, they passed at a significantly lower rate.



There is also evidence that there is no correlation of this trend to tax rate or economic climate.

V. SALEM BOND PASSAGE TRENDS

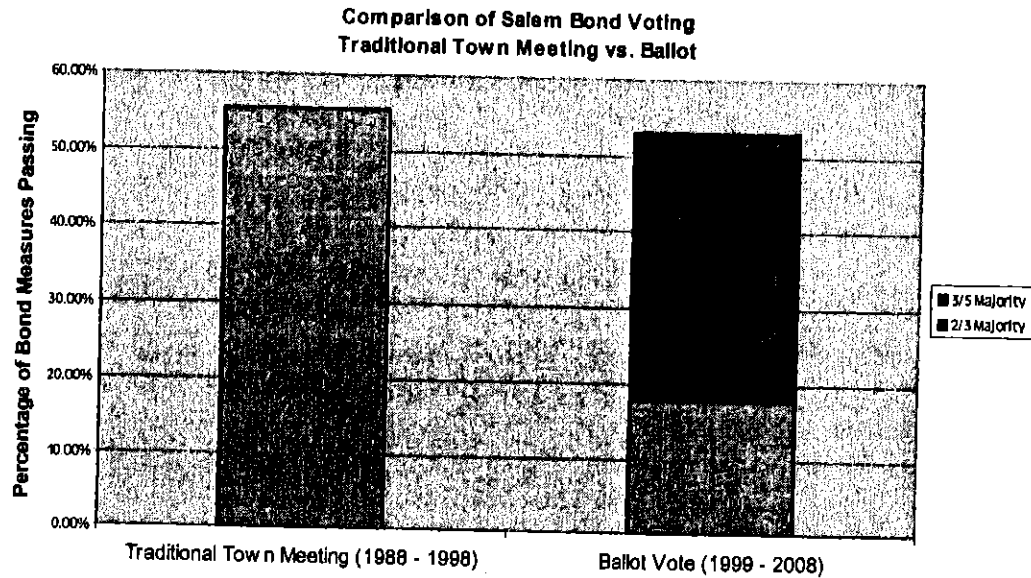
In addition to statewide bond voting statistics, the Town of Salem should also be examined. Prior to 1998, the Town of Salem used the Town Meeting form of government. Bonds were voted on during town meeting and a 2/3 majority of votes was required to pass a bond article. During this period the Town of Salem voted on eighteen (18) bond articles and passed ten (10) of them for an average bond passage rate of 55.56%. The specifics of these bond articles are shown in the table below.

Bond Articles Decided By Traditional Town Meeting Vote					
Year	Article #	Details	Yes	No	Pass/Fail under 2/3
1998	19	Spickett Hill Water Tower	181	61	Passed
	20	Sewer/Water Line Extn. South Shore Drive	187	54	Passed
1997	10	Police Safety Dispatch Conversion	110	266	Failed
1996	15& 15A	Arlington Pond to Canobie Lake Pipeline Construction & Water Management Agreement	708	339	Passed
1995	1	Special Town Meeting: Water Treatment Facility for Turner Well To Town Water System	147	54	Passed
1995	9	Solid Waste Transfer Station - TABLED			
	10	Salt & Equipment Storage Shed	266	118	Passed
	11	By Petition - Extend Sewer (Brookdale Road Canobie Ave., Burns Road, Emery St., Trey Circle, Lake Shore Road)	102	281	Failed
	12	Addition to Solid Waste Transfer Station	262	122	Passed
1994	13	Water Treatment Plant	316	91	Passed
	14	Reconstruct Roads	328	79	Passed
	15	Reconstruct Salem Street	283	122	Passed
	16	Solid Waste Transfer Station Expansion	218	161	Failed
	17	By Petition: Extend Sewer (Burns Ave., Canobie Ave., Lake Shore Road)	139	239	Failed
1993		None			
1992		None			
1991		None			
1990	20	Water Improvements	268	133	Passed
1989		None			
1988	18	Extend Sewer (Salem Center Phase II)	266	190	Failed
	19	Design, Construct/Reconstruct Town Roads	272	184	Failed
	20	Reconstruct/Resurface - Green Acres Project	290	166	Failed
	21	Design & Construct Sanitary Collector Sewers - Bailey Road	302	153	Failed

As described previously, in 1998, the Town of Salem amended it's charter to a hybrid Town Meeting / Official Ballot form of governance. Bonds were voted on by official ballot with a 2/3 majority required to pass a bond article. During this period the Town of Salem voted on seventeen (17) bond articles and passed three (3) of them for an average bond passage rate of 17.65%. If, however the bond passage super majority were 3/5 instead of 2/3, nine (9) of these bonds would have passed for an average bond passage rate of 52.94%. The specifics of these bond articles are shown in the table below.

Bond Articles Decided By Ballot Vote						
Year	Article #	Details	Yes	No	Pass/Fail under 2/3	Pass/Fail under 3/5
2008	14	Police Station	2652	2267	Failed	Fail
2007	18	Townwide Bridge Crossing & Hydrology Study	2070	1070	Failed	Pass
	19	N. Main St. Water Line	1795	1317	Failed	Fail
	20	Cit. Pet. Purchase Land for Conservation	1729	1324	Failed	Fail
2006	20	Arterial Road Program	2244	1118	Passed	Pass
2005		None				
2004	22	New Police Facility	2261	1847	Failed	Fail
	21	Lakes Area Infrastructure Program	2000	2081	Failed	Fail
2003	13	Water Line Extn. Blake Road Neighborhood	2252	1225	Failed	Pass
	14	Open Space Land Acquisition	2222	1160	Failed	Pass
	15	Sewer Line Extn Woodbury/Matthias/Robertson /North Policy	2276	1313	Failed	Pass
	16	Purchase Land in Town Center	2003	1336	Failed	Pass
	17	Purchase Land, Map 63, lot 3594	2187	1135	Failed	Pass
2002	16	Westside Interceptor Sewer	1350	1854	Failed	Fail
	17	Water Line Extn. Blake Road, Phase II	2298	945	Passed	Pass
2001	6	Westside Interceptor Sewer	1336	978	Failed	Fail
	7	Canobie Lake Sewer & Water Line Extn.	1103	1236	Failed	Fail
	8	Water Line Extension Blake Road	1564	751	Passed	Pass
2000		None				
1999		None				

The chart below compares the traditional town meeting and official ballot bond passage rates of the Town of Salem. *This chart clearly illustrates that Salem tradition is upheld with a 3/5 bond super majority not 2/3.*



VI. ALIGNMENT WITH THE SCHOOL DISTRICT

One final reason to revise the bond super majority to 3/5 would be to place the town in alignment with the school district. Currently the Salem School District operates under SB 2, which has a 3/5 super majority for bond passage, while the town is operating under a 2/3 bond super majority.

VII. CONCLUSIONS

The evidence presented here strongly suggests that a 3/5 bond super majority is right for Salem. This is borne out by the overwhelming number of our neighboring towns that are already exercising a 3/5 super majority. Statewide statistical data shows that when voting for bonds using an official ballot, disparities exist relative to the traditional town meeting and can be mitigated by adjusting the super majority to 3/5. More dramatically, local statistical data demonstrates that a 3/5 bond majority almost exactly matches the results of the Salem traditional town meeting.

Revising the bond super majority to 3/5 is not and should not be considered simply to get more bonds passed, but should be revised to 3/5 because it embodies the character and history of the Town of Salem. It is the recommendation of this report that the Town of Salem return to the intent of New Hampshire Town Meeting by establishing a 3/5 criteria for bond passage.

References:

1. Minard, Jr., Richard A., SB2 at 5: Bonds, Ballots, and the 'Deliberative Session', 2002
2. Hall, Douglas E., The Effect of the Official Ballot Referendum Form of Meeting on the Towns and School Districts of New Hampshire, 2000

EXHIBIT P

**Chapter 40 of the Town of Salem
Municipal Code; Ethics**

CHAPTER 40

ETHICS

ARTICLE I

Code of Ethics for Board of Selectmen

- §40-1. Declaration of policy.**
- §40-2. General responsibilities.**
- §40-3. Loyalty to the electorate; compliance with law.**
- §40-4. Obligation to provide fair and equal treatment.**
- §40-5. Conflicts of interest.**
- §40-6. Use of influence.**
- §40-7. Applicability and interpretation.**
- §40-8. Sanctions.**
- §40-9. Creed for Board of Selectmen.**

ARTICLE II

Outside Employment Policy

- §40-10. Restrictions on outside employment and business ventures.**
- §40-11. Approval of exceptions required.**
- §40-12. Conditions required for exceptions to be considered.**

[HISTORY: Art. I, adopted by the Board of Selectmen 11-14-77; Article II, policy issued 12-6-79. Amendments noted where applicable.] Reaffirmed by Board of Selectmen 3-22-99. Reaffirmed by Board of Selectmen 3-17-08

General Reference

Personnel policies - See Chapter 80.

ARTICLE I

Code of Ethics for Board of Selectmen

[Adopted by the Board of Selectmen 11-14-77]

§40-1. Declaration of policy.

The proper operation of democratic government requires that public officials be independent, impartial and responsible to the people; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a Code of Ethics for the Board of Selectmen. The purpose of this code is to establish ethical standards of conduct for Selectmen by setting forth those acts or actions that are incompatible with the best interest of the town and by directing disclosure by such officials of private financial or other interests in matters affecting the town. The provisions and purpose of this code and such rules and regulations as may be established are hereby declared to be in the best interests of the Town of Salem.

§40-2. General responsibilities.

Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state and to carry out impartially the laws of the nation, state and municipality and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.

§40-3. Loyalty to the electorate; compliance with law.

- A. Board of Selectmen members should be loyal to the political objectives expressed by the electorate and the programs developed to attain those objectives.
- B. Board of Selectmen members should not exceed their authority or breach the law. A Selectman shall not attempt to induce an officer or employee in the service of the town or a resident of the town to commit an unlawful act or to act in violation of any lawful statute, ordinance, regulation or legal order.

§40-4. Obligation to provide fair and equal treatment.

- A. Interest in appointments. Canvassing of members of the Board of Selectmen, directly or indirectly, in order to obtain preferential consideration in connection with any appointment to the town service shall disqualify the candidate for appointment, except with reference to positions filled by appointment by the Board of Selectmen.
- B. Use of public property. No Selectman shall request or permit the use of Town-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or area provided as municipal policy for use in the conduct of official business.
- C. Obligations to citizens. No Selectman shall grant or deny any special consideration, treatment or advantage to any citizen which is not available to every other citizen. Furthermore, no Selectman should make, encourage or accept any ex parte or other unilateral application or communication that excludes the interests of other parties in a matter under consideration when such application or communication is designed to influence an official decision or conduct of the official himself or other Selectmen or agencies in order to obtain favored

treatment or special consideration to advance the personal or private gain of himself or others.

§40-5. Conflicts of interest.

No Selectman shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties. Personal, as distinguished from financial, interest includes an interest arising from blood or marriage relationships or close business association. Specific conflicts of interest are enumerated below for the guidance of Selectmen:

- A. Incompatible employment. No Selectman shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties.
- B. Disclosure of confidential information. No Selectman shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the town. Nor shall he use such information to advance the financial or other private interest of himself or others.
- C. Gifts and favors. No Selectman shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the town; nor shall any such official accept any gift, favor or thing of value that may tend to influence him in the discharge of his duties or grant in the discharge of his duties any improper favor, service or thing of value.
- D. Representing private interests before town agencies or courts.
 - (1) No Selectman shall appear in behalf of private interests before any agency of the town.
 - (2) He shall not represent private interests in any action or proceeding against the interests of the town in any litigation to which the town is a party.
 - (3) A Selectman may appear before town agencies on behalf of constituents in the course of his duties as a representative of the electorate or in performance of public or civic obligations. However, no Selectman shall receive any gift or compensation that is contingent upon a specific action by a town agency.
- E. Contracts with the town. Any Selectman who has a

substantial or controlling financial interest in any business entity, transaction or contract with the town or in the sale of real estate, materials, supplies or services to the town shall make known to the proper authority such interest in any matter on which he may be called to act in his official capacity. He shall refrain from voting upon or otherwise participating in the transaction or the making of such contract or sale. A Selectman shall not be deemed interested in any contract or purchase or sale of land or other thing of value unless such contract or sale is approved, awarded, entered into or authorized by him in his official capacity.

- F. Disclosure of interest in legislation. A Selectman who has a financial or other private interest in any legislation shall disclose on the records of the Board or other appropriate authority the nature and extent of such interest. This provision shall not apply if the Selectman disqualifies himself from voting.
- G. Administrative relationship. Neither the Board nor any of its members shall direct or request the appointment of any person to or their removal from office by the Town Manager or by any of his subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the town unless otherwise provided in law. The Board and its members shall deal with the administrative service solely through the Town Manager, and neither the Board nor any member thereof, except as authorized by statute or local ordinance, shall give direct orders to any subordinates of the Town Manager, either publicly or privately.

§40-6. Use of influence.

No Selectman or candidate for the office of Selectman shall promise an appointment to any municipal position as a reward for any political activity. A Selectman shall not attempt to use or threaten to use personal or political influence to secure a promotion, leave of absence, transfer, change in rate of pay or character of work for any town employee. "Personal influence" under this section shall mean any activity inconsistent with recognized practices allowed by the Laws of the State of New Hampshire and the Town of Salem.

§40-7. Applicability and Interpretation.

- A. When a Selectman has doubt as to the applicability of a provision of this code to a particular situation, he should apply to the Board of Selectmen for an advisory opinion and be guided by that opinion when given.
- B. The applicant should not vote in the proceedings of the Board of Selectmen leading to the advisory opinion.

C. Any member of the Board of Selectmen may question the applicability of the code regarding another member of the Board of Selectmen. Said member shall request a meeting of the Board of Selectmen for an advisory opinion, and all parties shall be guided by that opinion when given. Action taken under this section should be considered by the Board of Selectmen as a legal matter and acted on accordingly. The Selectman shall have the opportunity to present his interpretation of the facts at issue and of the applicable provision (s) of the code before such advisory decision is made. This code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or charter provision and statutory or charter action is mandatory or when the application of a statutory or charter provision is discretionary, but determined to be more appropriate or desirable.

§40-8. Sanctions.

Violation of any provisions of this code should raise conscientious questions for the Selectman concerned as to whether voluntary resignation or other action is indicated to promote the best interests of the Town. Violation may constitute a cause for such action as implementation of disciplinary action as prescribed by state statute.

§40-9. Creed for Board of Selectmen.

As a Selectmen I believe: that the proper operation of democratic government requires that public officials be independent and impartial in their judgment and actions; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; that the public have confidence in the integrity of its government and public officials; and that the realization of these ends is impaired whenever there exists or appears to exist an actual or potential conflict between the private interests of governmental official and his public duties. The public interest requires ethical standards with respect to official conduct. Therefore, as a Selectman of the Town of Salem, New Hampshire, I assert my solemn belief that the primary responsibility for maintaining a high level of ethics among the Board of Selectmen falls upon the Board of Selectmen as the governing body elected by the people. Consequently, as a Selectman, I believe it is my duty to:

- A. Respect the importance of American ideals of government, of the rule of law of the principles of public administration and of ethical conduct in the performance of my public duties.
- B. Represent and work for the common good of the Town of Salem and not for private interest, assuring fair and equal treatment of all persons, claims and transactions coming before me in my official capacity.
- C. Refrain from accepting gifts or favors or promises of future benefit which might compromise or tend

to impair my independence of judgment or action as a Selectman.

- D. Learn the background and purposes of major motions before voting.
- E. Faithfully perform my duties as a Selectman by attending all sessions of the Board and of its committees of which I am a member, unless unable to do so for some compelling reason or disability.
- F. Help the Board maintain the highest standards of ethical conduct by refusing to approve breaches of public trust or improper attempts to influence legislation and by being willing to vote to censure or otherwise discipline any Selectman who willfully violates the duly established rules of conduct for Selectmen.
- G. Disclose all sources of income which may represent a substantial conflict or interest with my duties as a Selectman and to disclose the nature and extent of my interest as an officer, agent, member or owner of any business entity or other association which is doing business with the Town of Salem, such disclosure to be made to the Board of Selectmen.
- H. Refuse to represent private interests before town agencies or in the courts, except as may be my duty toward constituents, such service to be rendered without compensation, and refuse to accept or engage in any employment incompatible with my public duties.
- I. Disclose any private interest I may have in legislation before the Board or to refrain from voting when such interest is in substantial conflict with my public duties.
- J. Refrain from disclosing confidential information concerning any employee, resident or the Town of Salem itself.

**ARTICLE II
Outside Employment Policy
[Policy Issued 12-6-79]**

§40-10. Restrictions on outside employment and business ventures.

Effective January 1, 1980, no employee of the Town of Salem will be allowed to engage in secondary employment or to hold an interest in any business venture operating within the limits of the Town of Salem which has, as a result of federal, state or local legislation, the requirement for inspection and/or regulation by the department to which the employee is assigned and will utilize information available to an employee in his/her specific capacity with the town which could be considered sensitive, classified, or privileged information to which the employee would not be otherwise entitled.

§40-11. Approval of exceptions required.

Any exceptions to this policy must be approved by the Town Manager in writing.

§40-12. Conditions required for exceptions to be considered.

In order for an exception to be considered, the following conditions must be met:

- A. The employee requesting the exception must have been employed by the Town of Salem on or prior to December 6, 1979.
- B. The employee must substantiate that the secondary employment or business venture for which the exception is being applied was actively pursued or operated by the employee prior to and through December 6, 1979.
- C. The interest of the town and the particular department can be met and the requirement for inspection or regulation accommodated outside of the department which employs the individual requesting exception at no additional expense or inconvenience to the town.
- D. Reasonable standards or conditions to eliminate possible conflicts of interest can be established and agreed upon by the employee and the town.
- E. No previous agreement related to the secondary employment or business venture for which the exception is being applied has been made between the employee and the town.

**SALEM SCHOOL DISTRICT
SCHOOL ADMINISTRATIVE UNIT 57
Salem, New Hampshire**

July 21, 2008

Memo to: Salem Charter Reform Committee (SCRC)

From: Pamela Berry, Chair, Salem School Board

RE: Coordinating Capital Needs

I write in response to a Salem Charter Reform Commission (SCRC) question regarding possible town and school district coordination of capital project needs. Further, the SCRC is interested in knowing whether town and district officials can adequately plan long term capital expenditures without adversely affecting the tax rate. It is possible for officials to organize proposals so as to avoid large project conflict and limit taxpayer burden. However, coordination will require the harmonious support of the taxpayers, which has been a significant challenge of late

There are several ways to look at capital project investment. Both the town and the school district already have some experience in this regard. Given the question from the SCRC, then we assume we're considering bonded projects and not those projects placed in the operating budget. Moreover, it is assumed that proposed projects are necessary, worthwhile, and properly vetted.

It would be necessary to outline possible projects and schedule options for both the town and the school district. Of critical importance is a common understanding of schedule options when one or two projects in sequence fail to earn voter support. If a school district project fails to earn voter support, but a partial state funding option lapses, does the town support a second opportunity for the school district to earn citizen support and delay its own project by another year, or is the school district expected to defer to the town project? Conversely, if a town project fails, does the school district postpone a capital project request until the town is successful? In the most recent case, the town sought funding for a greatly needed police station while the school district sought architectural and engineering fees for a high school renovation. Do members of the SCRC consider these to be two requests in one year?

Most certainly, the Selectmen and the School Board should be able to outline a long term capital expenditure plan. The question from the SCRC may have to be rephrased to ask whether the town and school district can earn voter support for long term capital expenditures. Or, just as importantly, can the Selectmen and the School Board plan projects that are more likely to earn voter support. The first step may be agreeing to schedule a timely annual meeting to review capital improvement projects proposed by the respective Capital Improvement Plan Committees.