

Municipal Charters: A comparative analysis of 75 Maine charters

(from *Maine Townsman*, August 1992)

by Geoffrey Herman

The significance of a municipal charter, at least for the 75 towns and cities in Maine that have adopted one, can hardly be exaggerated. A charter is the municipal equivalent of a state or federal constitution, and it is within the municipal charter where such essential questions as the structure of government, the distribution of powers within the government, and a citizen's access to government are more or less completely answered. A municipal charter is a primary document; a taproot expression of local control: Home Rule authority congealed.

On the one hand, there is the observation that a charter can give powerful definition to a municipal government. On the other hand, the authority given to Maine towns and cities by statute to adopt internally regulating codes by ordinance make the questions "why have a charter?" or "why have more in your charter than absolutely necessary?" not entirely absurd.

By way of background, the municipal authority to enact a charter flows from the Maine Constitution, which at Article VIII Part Second, Section 1 reads:

"The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality shall so act."

The Home Rule implementation language regarding charters is found at 30-A MRSA §§ 2101-2109. These nine sections of law establish the statutory charter adoption, revision and amendment procedures. It was the enactment of this legislation, effective in 1970, that allowed municipalities to create, amend and revise their charters without first going to the Legislature for approval by means of a Private and Special Act. Despite the fact that municipalities can now create, amend and revise their charters on their own, charter maintenance is by no means a simple process. Charters can only be created or changed by secret ballot election, and charter adoption or revision is accomplished under the statutory process only by means of a specially created charter commission. Where ordinances are merely written on paper, charter provisions are etched in stone.

A related statutory home rule authority is established at 30-A MRSA § 3001. This statute authorizes municipalities to enact ordinances or bylaws governing any municipal activity to the extent such municipal authority is not expressly preempted by state or federal law or regulation. Because town meeting municipalities are able to accomplish so much in the way of describing and designating powers, duties and procedures by means of municipal ordinance, it is not automatically clear what advantages exist or are perceived to exist in going the charter route.

There are, to be sure, some compelling legal reasons to have a charter. One such reason is found at 30-A MRSA § 3007(1), which reads:

"No change in the composition, mode of election or terms of office of the municipal legislative body, the mayor or the manager of any municipality may be accomplished by bylaw or ordinance."

And indeed, the primary reason to create a charter is to accomplish what is denied to ordinance authority - the vesting of legislative authority, in whole or in part, to some body other than the open town meeting. There must be more to charters than simply this accomplishment, however, because of the 75 municipal charters in effect in Maine, only 57 create some form of representative government.

Another statutory provision, 30-A MRSA § 2602, yields another technical answer to the question "why have a charter?". This section of law deals with the way that vacancies in a municipal office are created and filled. Vacancies under this section of law are defined as non-acceptance, resignation, death, removal from the municipality, permanent disability or incompetency, failure to qualify within 10 days of written notice to do so, or failure to be elected. The law further states that:

Under its home rule authority, a municipality may apply different provisions governing the existence of vacancies in municipal office and the method of filling those vacancies as follows:

1. Any change in the provision of this section relating to municipal officers or a school committee must be accomplished by charter; and
2. Any change in the provisions of this section relating to any other municipal office may be accomplished by charter or ordinance.

There is therefore a technical reason to establish a charter if the municipality wishes to adopt a procedure by which municipal officers (i.e., selectmen, councilors) and/or school committee members may be recalled from office by the electorate or may otherwise forfeit their elected position for reasons beyond the statutory vacancies. In fact, just less than half of the existing municipal charters in Maine have recall provisions, and a similar percentage of existing charters create a vacancy in office when an elected official is convicted of a crime or repeatedly fails to attend regularly scheduled meetings.

And there is yet a third legal reason to adopt a charter. 30-A MRSA § 2501, a section of law that sets forth the basic interrelationship among Title 30-A election laws, municipal charters, and the state election laws in Title 21-A, opens with the following clarification:

Except as otherwise provided by this Title (30-A) or by charter, the method of voting and the conduct of a municipal election are governed by Title 21-A.

In other words, the Maine Legislature has specifically recognized that municipalities may exercise their constitutional home rule powers to adopt a charter that contains provisions for municipal elections which differ from those set forth in Maine law.

But even taken together, these technical reasons to adopt a charter--to create a representative form of government and/or modify the statutory election and de-election processes--do not fully address the question of "why create a charter?" In the last 22 years since municipalities were able to write and adopt charters on their own, at least 16 municipal charters have been created where they did not before exist, some of them for none of the technical reasons just cited. Charter maintenance work has been even more active. Half of all municipal charters have been significantly amended or revised in the last three years alone. On a weekly basis, news reports of charter problems or charter efforts bubble to the surface of local press accounts across the state as local governments and the citizens they serve strive to work and rework their charters to better suit their needs.

There must be more to the municipal charter than meets the eye.

The purpose of this article is to provide an overview of the 75 municipal charters in Maine; review both quantitatively and substantively those charter provisions that create municipal authorities not otherwise available under general municipal statutes; review those charter provisions that stand out as being unique methods of dealing with common municipal problems; and generally take a snapshot of the direction in which municipal charters are going.

Structure of Local Government

One way to categorize municipal charters is with regard to the structure of local government the charter creates. There are roughly four such categories:

Pure Town Meeting Charters: As mentioned above, some municipalities in Maine have adopted charters even though the charter vests no legislative authority with the board of selectmen or town council. One fourth of the charters in Maine are of this "pure town meeting" type. The range of population in the municipalities governed by this type of charter runs from about 1,000-8,000 inhabitants. Only one of these pure town meeting charters (Wales) describes the structure of a selectmen/town meeting government with no designated municipal manager or administrator. The remaining 17 pure town meeting charters describe a selectmen (or council)/town meeting/manager form of government. Less than one third of the existing charters in this category represent remnants of council/manager charters created by Private and Special Acts of the Legislature prior to the enactment of the Town Manager Plan, now found at 30-A MRSA § § 2631 et seq. The majority of charters in this category were first adopted after the inception of the Town Manager Plan, leaving alive the question of why these municipalities created a charter.

A most unique charter with regard to the structure of government is Sanford's approach, a Private and Special Act charter that establishes a representative town meeting form of government. The Sanford system was designed in 1935 to retain as much of a direct form of government as possible in the face of a growing population.

Revised in 1980, the Sanford charter retained its representative town meeting form of government while adding a town administrator position to its governmental structure. The Sanford system is no different than a pure town meeting form of government, except only elected representatives are allowed to participate at the town meeting. The current number of elected representatives to the Sanford town meeting is 147.

Limited Town Meeting Charters: Aside from the Sanford charter, the first type of charter creating a representative form of municipal government is a council/manager/town meeting charter where the council possesses some but not all of the legislative authority in the town. Generally, the council is authorized under these charters to make any municipal decision and take any municipal action by order, resolve or ordinance except that the town meeting retains full authority to raise through taxation or borrowing all funds necessary to run the government. There are 13 charters (17%) in Maine of this type, covering towns with populations from 1,000-13,000 inhabitants. Over half of these limited town meeting charters take on a decidedly transitional characteristic where they contain within them an express and typically simple petition procedure to abolish the town meeting altogether; an action that automatically shifts the town meeting's budget enactment authority to the council with little or nothing in the way of further charter amendment.

Council/Manager Charters: The essential characteristic of the third type of charter is that all legislative authority is vested in the town or city council. 33 (44%) of the 75 municipal charters in Maine are of this type, governing municipalities with a population range from 1,700-65,000 inhabitants. A few charters of this type create the office of mayor, but the mayor under this structure is chosen by the council rather than elected by the voters at large, and such mayors possess few powers or responsibilities not routinely given to council chairs. It is typical for charters of this kind to include relatively detailed provisions describing the town or city manager's responsibilities, express separation of powers language sharply limiting the council's authority to interfere in the day-to-day administrative responsibilities of the city manager as well as the budget adoption and bonding approval processes to which the council must adhere.

Council/Mayor Charters: The final charter type with regard to the overall structure of municipal government is the council/mayor or "strong mayor" charter. Some characteristics of a strong mayor system are:

1. the mayor is elected by the full electorate rather than simply chosen by the council;
2. the mayor is given the power of veto and, in some cases, budget line-item veto; and
3. the mayor is given considerable appointive powers.

Strong mayors are vested with some executive and administrative responsibilities typically given to city managers under council/manager charters, and to underscore the mayor's special role, the purely management figure under a strong mayor charter is commonly described as an administrator rather than a manager, or even "assistant to the mayor". The powers of appointment, veto and budget creation given to the elected mayor under a strong mayor charter closely resemble the authorities vested in the governor on the state level. There are 11 municipal charters in Maine that create the position of elected mayor. While most of the 11 elected mayor charters give some special authority to the office of mayor, some mayor charters are "stronger" than others. The strongest mayor charters have been adopted by cities with populations from 15,000-40,000 (Waterville, Saco, Biddeford, and Westbrook).

In 1978, the TOWNSMAN published a profile of municipal charters in Maine that was prepared by the Bureau of Public Administration at Orono. A comparison of the data in that report with current data shows a larger proportion today of pure town meeting charters and mayor/council charters than was the case 15 years ago.

Any charter, regardless of the particular structure of local government it sets out to describe, can be reviewed with regard to the manner it accomplishes three primary goals: a description of the qualifications and duties of the municipal officials, primarily the municipal officers, a description of the municipal budgeting and borrowing procedures; and an articulation of the policies and procedures governing citizen access to municipal government.

Qualifications and Duties of Municipal Officials

Council size/term length: As has been noted, any change in composition, mode of election or term of office of the municipal legislative body can only be accomplished by charter (30-A MRSA § 3007(1)). This should not be confused with the size or term length for boards of selectmen possessing no legislative authority, which can be adjusted by town meeting vote (30-A MRSA §2526(4)).

The size of the boards of municipal officers described or created by charter provisions in Maine run from one three-member board of selectmen in a pure town meeting charter (Wales) to an eleven-member council with an additional elected mayor (Biddeford). With only a few exceptions, the municipal charters evenly split between creating five-member councils and seven member councils. It is most typically the 7-member council that has an elected mayor in addition to the council. Only four municipalities have nine-member councils (Bath, Brunswick, Bangor and Portland).

By far, the favored term length designated by charter is 3 years. 80% of all charters create a three-year term for a municipal officer; the remainder designate a 2-year term length.

Term limits: As the debate continues on the state and federal level as to whether constitutional amendments should be considered establishing term limits for elected representatives, eight municipal charters in Maine have already created council term

limits. Three charters impose term limits on the office of school board member and/or positions on appointed boards. One charter places a term limit on the office of mayor. The favorite term limit for a council seat is two consecutive terms, although three-term and four-term limits are also designated.

Vacancies - attendance and forfeiture of office: Nearly every charter contains some express language describing how a municipal officer's position shall become vacant. As discussed above, municipalities can by ordinance expand on the statutory vacancy standards for municipal officials, other than municipal officers, but the creation of special vacancy provisions for the municipal officers must be accomplished by charter (30-A MRSA § 2602). Typically, a charter will list the standard, statutory causes of vacancy (death, resignation, failure to qualify, failure to be elected, removal from the municipality, removal from the election district, etc.), but 80% of existing charters go on from there to add special forfeiture of office provisions.

Beyond the normal definitions of vacancy, the forfeiture standards are typically three: violation of an express charter prohibition, conviction of a felony or "misdemeanor involving moral turpitude", and unexcused failures to attend council meetings. Over half the charters in Maine consider poor attendance, as defined in the charter, as cause for forfeiture. The most often-used attendance standard is failure to attend three consecutive council meetings. Less commonly employed charter provisions require the annual municipal report to include all council members' attendance records. A few charters automatically forfeit a councilor's quarterly pay if attendance levels fall below 50%-or some other percentage-of-scheduled meetings for the quarter. At least five charters in Maine create the same attendance standards for other municipal boards, such as the school committee.

Several charters establish a qualifying age of 21 for any elected official. In the absence of express charter language, the age of majority, 18 years, would apply as the qualifying age.

Prohibited acts: Nearly every municipal charter has a list of four or five express prohibitions that apply to all municipal officers, officials and employees. The standard list prohibits: discriminatory appointment or removal on the basis of race, gender, ethnicity, religion, or age; the making of false statements or perpetration of fraud; the acceptance of bribes; the solicitation of favors or special privileges; and interference in any person's rights to political activity and expression.

In addition to merely prohibiting such activity, and in addition to making such activity the grounds for forfeiture of elected office, 16 charters include language that disqualifies from office for a number of years an elected official who performs a prohibited act. The disqualification period is typically five years.

Judge of qualifications/subpoena powers: Nearly every town or city council, by charter, is granted the express authority to judge the qualifications of its members. Very few charters go into any detail beyond the boilerplate language to describe any

disqualification procedures, such as a councilperson's right to hearing, counsel, cross examination of witnesses, or any other form of due process. Even without process language, however, the authorization of council to judge its members' qualifications would appear to be an important charter provision, particularly when special forfeiture or vacancy standards have been established in the charter. Without the council having an express first determination of a member's qualifications pursuant to a special charter qualification standard, a qualification dispute would likely have to begin—rather than merely end—in the courts.

It is also the case that nearly every town and city charter grants the council a power of subpoena. This authority of the council to compel attendance comes in two forms. Under older Private and Special Act language, several municipalities can secure the issuance of a subpoena from a Superior or the Supreme Judicial Courts. Apparently this type of authority was typically granted by the Legislature under the pre-1970 charter creation process, and unless expressly repealed in the course of a subsequent charter revision, the council's authority to have a subpoena issued by the courts, even in the absence of any related litigation, would appear to still exist.

The less-archaic subpoena or compulsory attendance language does not reference the courts, and the subpoena would apparently be issued by the council itself, served at the direction of the council, and if unsuccessful in achieving attendance from the desired party, the basis of an action enforcement of the charter's subpoena provision.

Filling vacancies: Unless designated by charter, state law does not allow a council to fill a vacancy on the council by appointment. A special election must be called. Approximately a third of the existing charters take advantage of their charter authority by allowing the council to appoint a person to fill a vacancy created on the council until the next election. Half of those charter-created authorities, however, are limited to the filling of short-term vacancies only. Only 18 councils in Maine are given the right to fill council vacancies by appointment for a period of more than six months. Unless otherwise amended by charter, school committees are authorized by statute to fill vacancies by appointment (20-A MRSA § 2305(4)). At least eight municipal charters shift that appointment authority to the council.

Required meeting minutes/ agenda: With almost no exception, every charter requires the board of selectmen or council to keep a record of all business conducted; that is, minutes of their meetings. One charter requires all meetings of the municipal officers to be electronically recorded and transcribed. Several charters require the board or council minutes to be posted at the town office or the locations where municipal warrants are generally posted. Orrington's charter, which describes a limited town meeting structure of government, requires that minutes be kept of the town meeting as well as the meetings of the selectmen.

Five charters expressly require the municipal officers to develop a written agenda for every regularly scheduled meeting and either post that agenda for a prescribed period of time before the meeting, or publish the agenda in a timely manner in the local newspaper.

Unless imposed by charter, there is no legal requirement to keep full minutes of meetings of the selectmen or council, nor does state law require the use of agendas.

Quorum: There are two issues surrounding the question of quorum. The first issue to resolve is the number of councilors or selectmen that must be in attendance at any meeting so that the council can potentially take action. All charters but one employ a simple quorum requirement of a majority of the council or board. One charter requires a majority-plus-one to do business.

The second quorum issue that comes up from time to time concerns the number of affirmative or negative votes necessary to take action; is it a majority (or super majority) of the full council, or merely a majority of the councilors present as long as a quorum has been achieved? About a third of the existing charters are silent on this point. Of the 50 charters that address the issue squarely, only five allow the majority of the quorum to take action. The vast majority requires a simple majority of the full council. Several charters require super majorities for certain types of actions, such as ordinance enactment or bonding approval. Nearly all charters require super majorities for the passage of emergency ordinances.

Ordinance enactment process: Nearly all council-type charters require the council to act only by order, resolution or ordinance. Although only three charters define the practical difference between these types of action, most charters specify what must be accomplished by ordinance. Typically, actions requiring an ordinance include: adopting or amending any local code, providing for a fine or penalty or establishing any rule which could result in a fine or penalty if violated; granting or extending a franchise; conveying or leasing property of the town excepting tax acquired property; or amending any previously-adopted ordinance. Sometimes charters invoke the ordinance process for budget or borrowing authorization as well, but financial actions are more typically accomplished by resolution, with separate and express public notice or public hearing standards.

Not all charters establish a public hearing process before an ordinance is adopted by the council. Over 20% of the non-town meeting charters make no mention of a public hearing process. For the charters that do establish a public hearing prior to a council vote, there are two approaches. Slightly more than half of those 40-odd charters create a strong public hearing process whereby no ordinance can be enacted after an initial public hearing if the draft ordinance has been significantly amended as a result of the first hearing. To enact such an ordinance, the council must hold a subsequent public hearing to air those amendments. The remaining 20-odd charters contain a weaker, one-time-only public hearing process.

Three charters require a super majority (majority of the full council plus one) to enact any ordinance. Almost all charters require a super majority to enact an emergency ordinance; i.e., an immediately effective ordinance that can be enacted without the normal notice/hearing requirements.

With unique sunset language, the Calais charter automatically repeals all ordinances ten years after their adoption; a provision that would appear to have the obvious effect of achieving regular ordinance maintenance.

Abstention: Many charters require roll call voting by the council - yeas or nays - for action by ordinance or resolution. A councilor must declare a vote on the record either for or against. Three charters (e.g., Bar Harbor) go beyond this implication by discouraging or prohibiting an abstention from voting unless a bona fide conflict of interest is declared. This anti-abstention language usually requires that an unfounded abstention be recorded as a positive vote. One charter contains anti-abstention language such as this for the school board only.

Conflict of interest: 30-A MRSA § 2605 establishes a minimum standard governing conflict of interest. That statute makes "voidable and actionable" decisions made by municipal agencies, authorities, boards, commissions and offices when those decisions could involve the financial interests of the decision-makers. Under the statutory standard, a municipal official with a 10% or greater interest in a business or economic entity is automatically considered to be financially interested in that business. When such an official is expected to make a decision affecting a business in which the official is interested, the remedy is declaring the financial interest and removing him or herself from the decision making process.

Half the municipal charters in Maine take on the issue of conflict of interest; half are silent on the subject. It is typical for a charter's conflict-of-interest language to extend the prohibition to all municipal officials and employees. Beyond that, the difference in strategies focuses on the threshold of financial interest that invokes the prohibition. The most often-used threshold throws the 10% standard out the window and replaces it with the strict "any financial interest". Following that in use is the somewhat vague "substantial financial interest". A handful of charters simply adopt the 10% standard of Title 30-A, and one charter defines financial interest as a 5% financial interest in the affected business, economic entity or contract holder. Five charters contain language apparently from the Private and Special Act era that establishes a strict-standard prohibition but fails to include a remedy; that is, the charter flatly prohibits a municipal transaction where any conflict of interest exists.

Anti-nepotism/incompatibility of office: Nearly every charter contains express language prohibiting a municipal officer from holding any other elected or appointed municipal office or position of employment during the term of office which he or she was elected. Also, most charters, simplifying and strengthening the prohibited appointments statute at 30-A MRSA §2606, prohibit a former councilor from holding any compensated appointive position or employment until one year after the expiration of the term for which he or she was elected.

Beyond these near-boilerplate charter provisions, few charters further define automatic or per se incompatible positions.

A handful of charters, with what appears to be some old Private and Special Act language, expressly prohibit "a teacher" from being on the council. These anti-teacher provisions do not take into account whether the teacher is employed by local or distant school districts, or even whether the teacher is employed by a public school system at all. One charter does not allow anyone to be appointed to any municipal board whose spouse is a municipal employee.

Less than five charters contain any express anti-nepotism language. Auburn recently clarified its anti-nepotism provision to read:

"The mayor, the members of the city council, city manager, deputy city manager, members of the school committee, and the superintendent of schools shall not be interested directly or indirectly in any contract of the City nor shall their spouses be gainfully employed as city employees. Once the foregoing appointed or elected officials have assumed their positions, their children may not thereafter be hired as city employees."

The Old Orchard Beach charter prohibits the appointment of a councilor's spouse to any compensated town office position or departmental employment under the council's control, except that spouses employed previously to the councilor's election may maintain their employment but must forgo any salary increase while their spouse is on the council.

Appointment authority: Charters generally designate which municipal offices are filled by council appointment and which positions are appointed by the manager. The variations are too numerous to detail here. The council or board of selectmen always appoint the manager except that in most elected-mayor municipalities the council's role is to confirm the mayor's nomination. As well as the manager, the council typically appoints the municipal attorney, treasurer, clerk and assessor. The council also appoints membership (or confirms the mayor's nominations) to all municipal boards, commissions or trustee positions, with the exception of the elected school board. Two charters appoint one council member onto the otherwise elected school board, and the Biddeford charter makes the mayor the ex officio chair of the school board.

By charter language, municipal managers are typically given the authority to appoint the tax collector and the various department heads, such as the fire and police chief, the director of public works, the welfare director, and so on. In some cases the manager fills practically all offices by appointment, except municipal board membership, and with the further exception that final say on the municipal attorney is generally granted to the council.

At least two charters include as their centerpiece a clear diagram of the structure of the municipal government, an example of which is reproduced here.

Personnel system: Well over half of the existing municipal charters establish some form of personnel management system. As a rule, the municipal manager is designated the personnel director and assigned the task of promulgating personnel rules. Some charters

go into considerable detail with regard to what policies and practices such rules will cover. Nearly half of the 40 charters that establish a personnel system also create a personnel board to assist in the rule-making process, advise the council on issues of personnel management, and act as an appeals or grievance board.

Several town charters (e.g., Linconville, Veazie) adopt an affirmative action policy. Fairfield's charter contains a provision that favors the municipality's employment of Fairfield residents when competing candidates for employment are otherwise equally qualified.

Budgeting and Appropriations

Fiscal year: A third of all charters are silent as to the municipal fiscal many charters that describe a fiscal year also grant to the council in the same breath the authority to change the fiscal year at its discretion. Over 30 charters align their fiscal year with the state's (July 1-June 30); half that number designate the calendar year as the fiscal year.

Budget adoption process: 80% of the existing charters create a more or less explicit budget adoption process. The essential order of the process is relatively standard. The process begins at a designated date before the beginning of the fiscal year- typically 35 or 60 days but in some cases as many as 120. It is usually before that designated date that the school board is required to submit its budget to the town or city manager or administrator. No later than the designated day, the manager presents his or her total budget to the council or board of selectmen. The municipal officers review the budget and amend it as the board or council feels necessary. A public hearing is then scheduled and held on the budget as proposed. After making any changes the board or council feels appropriate in light of the public hearing, the budget is either adopted by the council or- where the council lacks authority-advanced to the town meeting. Several charters, even where the council adopts the budget, make no provision for a public hearing. A few charters lean in the opposite direction by paying special attention to the budget's public hearing process. The Town of Orrington, for example which enacts its budget in open town meeting, has a charter provision that requires that the notice of the pre-enactment public hearing be delivered to every house in town.

The dozen or so variations on the general budget adoption process are found in the charters that establish budget committees. The review by the budget committee necessarily adds at least one additional step in the process, but there is considerable variation as to when in the process the budget committee review occurs. Some charters orchestrate the budget committee review to occur simultaneously with the council's review and schedule joint meetings among the council, the school committee and the budget committee prior to, or as part of, the public hearing process. Some charters give the proposed budget to the budget committee for recommendation even before the budget is ever submitted to the council. Some charters schedule the budget committees review only after the budget has been first worked over by all the other players.

Under York's charter, it is the budget committee that actually crafts the budget; the school committee and municipal officers are only allowed to make recommendations on the budget committee's product to the town meeting. A Superior Court recently vacated those provisions as a result of its findings that the charter impermissibly reversed the respective roles of the school and budget committee.

Expenditure limits: Although a number of municipalities have imposed upon themselves expenditure limits over the past few years, currently only Bath's charter contains such a provision. After carving out a number of special revenues and expenditures, the charter caps expenditure appropriations at the level of the previous fiscal year as adjusted by the national Consumer Price Index.

Budget and Finance Committees: There are 18 budget committees and three finance committees created by charter. The budget committees created by charter serve towns with populations ranging from less than 1,000 to 10,000 inhabitants. A third of the budget committees are entirely appointed by the council or board of selectmen; a third are entirely elected by the voters at large; and a third are filled by a mixture of appointment and election. The finance committees created by charter serve larger, non-town meeting municipalities (Biddeford, Lewiston and Orono) and tend to be subsets of the council. With only one exception, budget committees (as opposed to finance committees) have been created by charter for town meeting municipalities.

Budget committees tend to be large for municipal committees. A 15-member budget committee is common, and membership goes as high as 25 elected members. Budget committees are commonly granted special and early access to the budget documents and supporting material, the manager's and council's attention, and a privileged status during the public input and hearing processes. Beyond that, the budget committee's role as designated by charter goes no further than making formal recommendations to the legislative body with regard to each appropriation proposed in the municipal and school budget.

Form of budget: It would be impossible to categorize in any simple way the wealth of charter language governing the actual form of the appropriation resolve. Some charters list the several specific departments around which the budget must be organized. Other charters require budgeting around "cost centers" or "program centers" in an attempt to encourage an outcome-based rather than bureau-based budgeting process. Many charters, as might be expected, require an itemized budgeting format. Under this system, the final adoption of the budget constitutes an appropriation by line item which has ramifications with regard to overdraft prohibitions, supplemental appropriation authorities, and account transfer authorities. At least a dozen charters, following a different strategy, require a line item budget but then carefully distinguish the form of the budget from the form of the appropriation resolve by expressly authorizing the council to enact only gross budget appropriations per department, office, or agency. The Freeport charter, as another example, obliges the council to adopt the school budget as a gross appropriation, and subsequently obliges the school committee to certify back to the council a plan for the appropriation expenditure by line-item.

Virtually all charters that create a procedure of budgeting expressly require a budget that is balanced between appropriations and revenues. Several charters carefully limit the authority of the council to play games with revenue projections. The most common method of so-limiting the council is to require its reliance on the manager's revenue projections. Under South Portland's charter the city manager is required to formally certify to the council the specific evidence supporting all projected increase in any miscellaneous revenue line compared to revenue actually received in that line in past years. In another apparent attempt to secure a reasonably reliable revenue projection, Hampden's charter calls for the calculation of revenue on the basis of the last quarter of the existing fiscal year and only the first three quarters of the upcoming fiscal year.

Many charters split the budget into a school and non-school component. Bath's charter joins several others that break the budget into multiple, separate, stand-alone components, for example, the operating budget, school budget, sewer budget and CIP budget.

Orrington's charter attempts to throw light on all program expansion intentions by requiring the budget to identify all projected program costs with virtually no change to existing program design, and then compare those figures in a side-by-side against total program appropriation requests.

At least a half dozen of the town meeting charters prohibit the town meeting from increasing any appropriation, either at open town meeting or by petition, over amounts recommended by the selectmen or council in the budget.

Several charters require at least 2% of the total budget to be set aside in a sinking fund if there exists any outstanding debt. Other charters create similarly funded reserve accounts that serve to accept year-end surplus, re-fund overdrafted accounts to zero-balance, top-off the sinking fund to its charter-required levels, before lapsing any into surplus.

Work programs: Roughly half of all existing charters share nearly identical language requiring the various municipal departments to submit to the manager detailed work programs as part of either the budget development or budget administration process. Presumably, the work program requirement is of a piece with an overall program budget method.

Capital programs: Nearly half of all charters also require the annual adoption of a capital program (a.k.a., capital investment/improvement program, or CIP). A dozen town meeting charters require the development of a CIP) and half of those delegate the job in whole or in part to the planning board. Typically, the capital program document, which projects out for at least five years all major capital improvement expenditures, is presented to the council or selectmen by the manager or planning board a month or two before the budget process begins. Many of these charters require the development and adoption of the School Committee's CIP as well. Under council/manager charters, the council holds a public hearing on the proposal, tinkers with it as the council sees fit, and adopts the CIP. Under town meeting communities, the CIP is often merely an advisory document or a required part of the town report, rather than a formally adopted plan. In

either case, to what extent a CIP is binding on the budget it is often unclear by the charter language. At least one charter (Brunswick) expressly establishes the CIP's status as non-binding. By the terms of Van Buren's charter, on the other hand, the current year's CIP allotment must be included in the annual budget and the annual CIP appropriation must not be less than at least 4% of the total budget raised by property taxes.

Continuing resolution: 90% of the non-town meeting charters address the issue of continuing resolution; that is, to what degree can the council appropriate money in an existing fiscal year without an adopted budget. Over half of those charters grant the council an unlimited "continuing resolution" authority. Sixteen charters limit this practice in a variety of ways. A mere handful of charters prohibit it completely by simply establishing a date certain when the budget must be adopted. The more typical approach is to automatically adopt-by the strength of the charter language alone - the manager's proposed budget if the council has failed to adopt an alternative budget by the date established. One charter allows for continuing resolutions, but only up to one third of the budget appropriated for the last fiscal year.

Transfers: There are a variety of charter strategies covering the authority of the manager and/or council to permit the transfer of funds during the fiscal year from one account to another or from one department to another. A charter's transfer authority language is largely dependent on the form of the appropriation resolve or the town meeting warrant where appropriations were enacted. Where gross appropriations were enacted, the legislative body is essentially permitting transfer within the appropriation. Where appropriation is accomplished by line, an unauthorized transfer could be a real problem. With regard to the need for special transfer authority, several charters appear poorly coordinated inasmuch as they establish gross appropriations to departments but require council approval for transfers within those appropriations. None of the pure town meeting charters permit the board of selectmen to transfer funds between general classification accounts or departments, although several expressly authorize within-department transfers by the municipal officers.

There are a variety of approaches to transfer authority. Typically, transfers are only authorized in the last three months of the fiscal year. The favorite approach (excepting the pure town meeting charters) authorizes only the council or selectmen to transfer funds, upon the recommendation of the manager, either within a department or between departments. The next, most often used approach allows the manager to transfer within a department, but council/selectmen approval is required between departments. Another common approach prohibits transfers but establishes a reserve fund to collect unspent appropriations at the close of the fiscal year from which overdrafted accounts are refunded. A few charters permit transfers only by a super majority vote of the council. Two charters (Oakland and Mechanic Falls) cap the amount of money transferred at a certain percentage of the total budget.

Lapse: Nearly every charter that speaks to the issue requires every account to be lapsed into surplus at the close of the fiscal year, to the extent the account has not been encumbered, with the universal exception of capital accounts. With regard to capital

accounts, most charters go on to require the lapsing of any capital account that has been idle for three years. Beyond the general language allowing for the carryover of "encumbered" accounts, some charters create reserve accounts for specific purposes and block all surplus in those accounts from reverting to the general fund. Portland's charter, for example, creates a reserve fund for the purpose of the city's self-insurance program.

Citizen Access

Initiative and Referendum: Provisions of municipal law in Title 30-A provide methods by which citizens can petition to have the legislative body of the municipality consider a proposed action (initiative), or review an action taken by bringing that action back to a direct vote of the entire electorate (referendum). In the absence of any charter provision to the contrary, these Title 30-A methods (sections 2522 for initiative, and 2528(5) for referendum) would be available. The statutory law generally does not limit the substance of the initiated or referred action, although there is case law that allows the municipal officers to refuse petitions in certain very limited circumstances.

The initiation of either of these procedures under statutory law, unless the municipal officers order the initiative or referendum election on their own authority, requires a petition to be signed by at least 10% of the number of voters who voted at the last gubernatorial election. By charter, the method of petitioning for initiative or referendum can be made more or less difficult than the statutory standard, or even eliminated entirely if the electorate ever would adopt such a self-limiting charter provision.

Slightly less than half of all existing charters limit to some degree the substance of initiated or referred questions. Thirty charters, all with generally the same language, prohibit initiative or referendum petitions that would appropriate money, adjust the budget, levy taxes, force an official's appointment or removal, or adjust salaries. The 45 remaining charters, either expressly or by their silence, do not limit the substance of an initiative or referendum petition.

With regard to the number of petition signatures necessary to bring an initiated or referred question to an election, about half of the existing charters require a larger percentage of voter signatures than is required by state law. About 30 charters are silent on the matter, refer to the state law or parallel the state law standard. Half a dozen charters establish a fixed number of signatures-between 125 and 500-rather than a certain percentage of the electorate. The remaining charters tend to establish a petition standard of from 5-20% of all registered voters rather than merely the number of those voting in the last gubernatorial election.

After the certification of the petition's sufficiency, there remains the issue of scheduling the election. Approximately one third the charters require that the election be called after thirty days but no later than one year from the certification of petition sufficiency. The majority of charters, in apparent alignment with the 60-day language in the Title 30-A initiative statute, require the election to be called within 60 days, unless a regularly scheduled election will occur within 90 days.

A couple of charters establish a quorum requirement of 20% of all registered voters at any initiative or referendum election.

Seven charters establish a "cooling off" period of either 120 or 180 days before an initiative or referendum petition can again be accepted on the same issue after an initiative or referred question fails at election. One charter establishes a one-year cooling off period.

There is, finally, an issue regarding the distribution of petitions. 30-A MRSA §2504 is a section of law that allows for the free circulation of a local initiative petition as an alternative to a system established in many charters where the town clerk holds the petition for signing at the municipal office only. This section of law, enacted in 1989, expressly overrides any charter provision to the contrary, and there are a number of charters which have yet to amend their charters into conformance with the law.

Recall: As indicated above, to establish a process by which the municipal officers or school committee members can be recalled by the voters the wording of state law requires the adoption of a charter provision. There are 35 charters with recall provisions. The number of petition signatures necessary to initiate a recall election varies widely. Two charters require a fixed number of signatures (500 and 3000) on a recall petition, the remainder require a certain percentage of the registered voters ranging from 10% of the voters at the last gubernatorial election to 25% of the total number of registered voters.

Ten of the recalls establish a cooling off period of 120-180 days if the recall petition drive results in an insufficient petition or the recall election fails to oust the councilor. Two charters establish quorum requirements at recall elections, one of which is very substantial (40% of qualified voters). Many charters require the recall petition to indicate a reason why the councilor or selectman should be recalled, and as many as three charter provisions require that recall petitions can be initiated only "for cause" although it is very unclear how "cause" is established or whether a showing of cause is, indeed, a burden for the petitioners to meet.

One charter refers to the recall standards in state law, of which there are none. Another charter prohibits a successfully recalled elected officer from being appointed to any position in the municipality for a period of two years. At least one charter does not accept recall petitions if the municipal officer's term expires in less than a year.

Nominations and Elections: Although partisan election practices on the municipal level may have been more common in the past, there are now only three charters that establish a partisan contest for the position of elected municipal office.

Beyond those exceptions, it would be impossible and especially unhelpful to detail the myriad insubstantial and arcane differences between the nomination and election procedures described by charter versus those procedures as detailed in Titles 30-A and 21-A. Suffice it to say that even though Maine law allows municipalities to establish unique nomination and election procedures by charter, few municipalities that have

recently created or revised their charters are taking on the task. A moving away from unique election procedures can be seen as a trend in charter development.

Given that it is becoming more common for municipal charters to simply reference statutory election procedures, one caution should be noted. There are municipal election procedures in Title 30-A and state election procedures in Title 21-A, and within Title 30-A there are cross-references to applicable Title 21-A procedures. Some of the election procedures in Title 21-A, however are not at all applicable on the local level. For this reason, a blanket charter statement establishing a conformance to the nomination and election procedures established by Titles 30-A and 21-A would be an overly broad reference and could conceivably come back to haunt the municipality. A more targeted reference would establish a conformance to the nomination and election procedures established in Title 30-A, and such additional procedures established in Title 21-A that are expressly or reasonably applicable to municipal elections.

Bonding authority and required referendums: Of the 44 charters in Maine that establish the council as the municipality's sole legislative body, 16 place a limit on the council's authority to issue bonds without ratification by the voters at large. These bond-limiting charters with only one exception establish a bond value threshold before the bond referendum requirement kicks in. Most of those threshold levels are straightforward dollar figures per single-issue bond and/or aggregate bonds, ranging from \$25,000 to \$500,000. Alternative thresholds established by charter include 10% of the last fiscal budget, 15% of the present fiscal year tax levy, or .0007 of the municipality's last state valuation.

Right to Know: Most every charter establishes an open meeting, notice of meeting, and executive session policy by either referencing the Freedom of Information Act law at 1 MRSA § § 401 et seq. or by actually including in the charter substantially the same "right to know" requirements.

The one area where all but two charters coordinate poorly with the state's right to know law is with regard to the town or city manager's removal process. With almost no exception, the charter process of manager removal provides the manager a right to a single public hearing, if he or she so desires, before the council or board of selectmen takes action. Indeed, this right to a public hearing is also part of the statutory town manager plan at 30-A MRSA § 2633, and there is nothing illegal or inappropriate about this charter language on its face. Maine's Freedom of Information Act, however, also creates a right for a municipal employee to have his or her performance evaluated in executive session, and it is clear that should any manager request executive session deliberations prior to a board's removal action, that manager would be entitled to a behind-closed-doors review. It is only the charters of Bath and Lincolnville that expressly coordinate the Right to Know law with the manager's removal process.

Charter amendment procedures: By statute, a charter must be created, revised (i.e., fundamentally changed) or amended according to the procedures of 30-A MRSA §2101 et seq. It is not entirely clear to what degree alternative charter amendment procedures

may be established by charter. To create or revise a charter by the statutory procedure, the voters of the municipality must first vote to create a charter commission to draft the charter. The municipal officers can place that question before the voters on their own, or they can be forced to do so by a petition signed by qualified voters in number at least equal to 20% of those voting in the last gubernatorial election. To simply amend an existing charter, the process is the same except a charter commission is not required merely a public hearing. (The distinction between a charter amendment and a charter revision is not simply described. For guidance, refer to a May 1982 TOWNSMAN Legal note on the subject.) All votes regarding a municipal charter must be accomplished by secret ballot.

At least a dozen charters incorporate some charter amendment language, although no bold deviations from the statutory design are attempted. The amendment procedures that charters contemplate for themselves do not become embroiled in the subtle distinction between charter amendment or revision, preferring instead to focus on amendment procedure only. Also, the favorite charter petition requirement is 20% of the currently registered voters rather than just 20% of the number of voters at the last gubernatorial contest. Beyond these flirtations, the charter amendment language in the municipal charters in the state is perfectly aligned with the statutory process.

With a burst of energy, two charters call for an automatic, periodic (five year or ten year) formation of a charter commission to review the charter and make recommendations, either in the form of revision or amendment, as deemed appropriate. On the other side of the coin, at least one charter still details the procedure to petition the Legislature for a charter amendment, fully 22 years after such a procedure became extinct.

Conclusion

Behind a charter's stuffy boilerplate language, and just underneath the tedious legalistic detailing, there appears to exist at least three related tensions at work that serve to give energy to municipal charter development in Maine.

One such tension is the ever-present contest between Home Rule authority and the dictates of state law. The York charter, for example, ran abruptly into the preemptive force of state law when it attempted to create in its Budget Committee essentially a third body of municipal officers. Looking beyond the issues associated with the York charter, it would generally appear that when a charter imposes stricter standards on local government than established by state law, the charter authority will go unchecked. Examples of this type of charter activity would include attendance requirements, ethical codes, recall procedures, term limits and budgeting constraints. What is less clear entirely is the degree to which charter provisions that act to improve administrative efficiencies can be enforced or may otherwise face preemption by the Legislature. Just three years ago, the Legislature saw fit to preempt charter authority over a very narrow, local choice, petition process issue.

Another tension simmering below the otherwise placid surface of municipal charters concerns who within the community controls charter maintenance and development. In most cases, the fundamental purpose of the charter is to vest powerful decision-making and policy-making authority in a representative body rather than the electorate at large. It is not possible on the other hand to suppress the observation that charter amendment and revision activity in recent years has been promoted and adopted precisely for the purpose of checking the authority previously granted to the electors' representatives. It is these often-competing interests of the voters to simultaneously establish both efficiency and accountability in their local government that drives the evolution of municipal charters.

Perhaps the underlying dynamic that seems to drive charter development concerns the fundamental purpose of the charter. Is it intended to be a process document--a mere guidebook to municipal procedure for the benefit of municipal officials and citizens--or is it the intention of the community to create by charter an abiding policy document that delegates the administrative detailing to less entrenched and more easily maintained administrative codes? Specific administrative detailing within a charter yields clarity, but often at the price of flexibility. Policy-rich charters, on the other hand, provide more definition and personality to the municipality and tend not to hamstring the local government when a unique local circumstance demands a certain municipal reaction or an abrupt change to the state's general statutes make a charter provision non-conforming with law.

Municipal charters, in short, are a juggling act that never rests. State law and local control; the interests of the municipal government and the sometimes competing interests of the voters at large; the policy goals versus the procedural purposes of the actual document, these are all driving forces working at a constant interplay behind the charter. It would almost seem that as solid and impregnable and verbally stuffy as the charter document may appear, it is more actually a snapshot of the moving municipality in a peculiar instant of repose.