



Charter Government in NH

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Our Presenters



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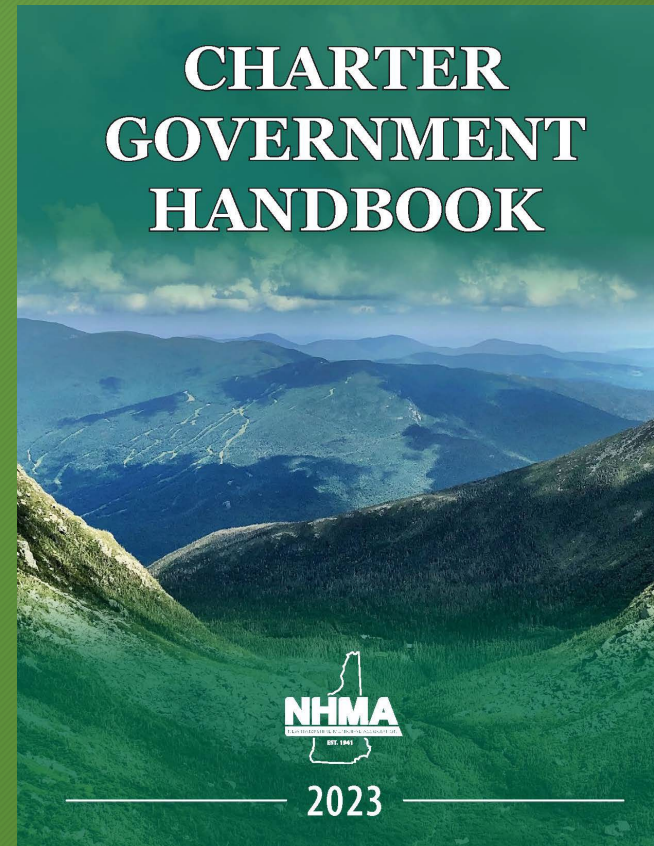


Jonathan Cowal
Municipal Services Counsel

Charter Government Handbook 2023



- Nine Chapters:
 - Finding the Law
 - Municipal Charters
 - 91-A, Liability
 - Municipal Employment
 - Property Taxation
 - Budgeting & Finance
 - Land Use/Planning Board/ZBA
 - Ethical Issues
- Table of Statutes



Origins of Municipal Charters



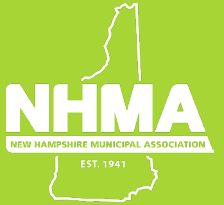
- Traditionally, the NH Legislature had complete control over municipal charters.
- A 1966 amendment to the NH Constitution limited the legislature's authority to amend municipal charters by adding Article 39 Part I.
- The amendment to the constitution prevents the legislature from altering the form of municipal government, as provided in any municipal charter without a referendum vote. *13 NH Practice Series: Local Government Law § 33 (2023)*.
- This amendment is referred to as the home rule power to adopt or amend municipal charters in any way which is not in conflict with general law.

Legislative Authorization to Adopt & Amend Municipal Charters



- RSA 49-B:2:
 - 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.*
- If the proposed charter denominates the municipality as a town, the charter shall be prepared pursuant to RSA 49-D.
- If the proposed charter denominates the municipality as a city, the charter shall be prepared pursuant to RSA 49-C.

Forms of City Government - RSA chapter 49-C



- Under the mayor-aldermen plan the mayor is elected by the voters and is chief administrative officer and the elected mayor along with the board of aldermen are the legislative body. There is no city manager.
 - ✓ *Examples: Manchester, Nashua*
- Under the council-manager plan the mayor is either elected by the voters or selected by the council from among its own members, with the council as the legislative body. The chief administrative officer is a city manager appointed by the council.
 - ✓ *Examples: Berlin, Claremont, Concord, Dover, Franklin, Keene, Laconia, Lebanon, Portsmouth, Rochester, Somersworth*

Forms of Town Government



- Traditional/Open Town Meeting with Select Board
- at last count 146 towns.
- Town Meeting/Official Ballot Referenda (SB 2)
with Select Board: at last count 73 towns.
- Local Option Town Charter Towns as provided in
RSA 49-D:3: at last count 9 towns.

Optional Town Charter Towns under RSA 49-D:3



- Town Council - Charter provides for a legislative body (town council) which acts with all the powers of a City Council.
 - ✓ *Examples: Derry, Durham*
- Official Ballot Town Council - Charter provides for voting on some or all legislative matters at town meeting by official ballot. All other matters are left to the council.
 - ✓ *Examples: Hooksett, Londonderry, Merrimack, Newmarket, Salem*
- Budgetary Town Meeting: Town meeting votes on operating budget but the charter may also authorize town meeting to approve bond issues and amend zoning ordinance. All other authority is vested in the council.
 - ✓ *Example: Bedford*

Optional Town Charter Towns under RSA 49-D:3



- Official Ballot Town Meeting: Charter provides for voting on some or all warrant articles by official ballot. Open town meeting votes on all other legislative matters.
 - *Example: Peterborough*
- Representative Town Meeting: Same as traditional/open town meeting above, except that the town meeting is conducted by representative democracy - the attendees are elected from among the townspeople.
 - *Examples: None*

Charter Amendment or Revision? RSA 49-B:4-d



- A "revision" to a municipal charter shall mean any change to an existing charter that results in a change in the municipality's form of government.
 - *Example:* changing from traditional town meeting to a town council
- An "amendment" to a municipal charter shall mean any change to an existing charter that does not constitute a revision under RSA 49-B:4-d.
 - *Example:* An amendment prescribing the hiring of a new auditing firm every 5 years
- A charter revision requires the election of a charter commission, and the charter commission prepares the revision for ballot vote by the voters.
- A charter amendment is prepared by the municipal officials and is voted on by official ballot by the voters.

Charter Limitations



Charter cannot exceed or conflict with state law.

- *Appeal of Barry*, 143 NH 161 (1998): City retirement system not subject to change by charter amendment.
- *Hooksett v. Baines*, 148 NH 625 (2002): Charter could not impose term limits on elected local officials.
- *Manchester School District v. City of Manchester*, 150 NH 664 (2004): Charter could not make school district a city department.

Some Required Charter Provisions for Cities



- Charter shall provide procedure for filling vacancies in offices of mayor, aldermen and councilors - RSA 49-C:10
- Charter shall specify a mayor or city manager as chief administrative officer - RSA 49-C:16
- 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 - RSA 49-C:19

Fiscal Control Procedures Required for City Charters



Mandatory fiscal control procedures - RSA 49-C:23:

- ✓ Public hearings on proposed budget
- ✓ Fund transfer procedures
- ✓ Annual audit
- ✓ Bonding of city officials
- ✓ 2/3 vote of council/aldermen to spend for purposes not in approved budget
- ✓ Quarterly reporting of state of city's finances

Statutory Authority Of Cities to Enact Ordinances & Bylaws



Cities vested with same statutory powers conferred on towns:

- ✓ All cities now or hereafter incorporated shall have, exercise and enjoy all the rights, immunities and privileges of, and shall be subject to all the duties incumbent upon, or appertaining to, the town corporations to which they succeed. RSA 44:1
- ✓ All the powers vested by law in towns, or in the inhabitants thereof, shall be exercised by the city councils by concurrent vote, each board having a negative on the other. RSA 47:1
- ✓ The city councils shall have power to make all such salutary and needful bylaws as towns and the police officers of towns and engineers or firewards by law have power to make and to annex penalties, not exceeding \$1,000, for the breach thereof; and may make, establish, publish, alter, modify, amend and repeal ordinances, rules, regulations, and bylaws for the purposes stated in this section. RSA 47:17

Town Council and Official Ballot Town Council Authority to Enact Ordinances & Bylaws



Town Council Town under RSA 49-D:3, I have the same statutory powers conferred on cities to enact ordinances and bylaws:

- ✓ “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.”

Official Ballot Town Council Towns under RSA 49-D:3, I -a also have the same statutory powers conferred on cities to enact ordinances and bylaws:

- ✓ “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.”

Budgetary Town Meeting, Official Ballot Town Meeting and Representative Town Meeting Authority to Enact Ordinances & Bylaws



Unlike *Town Council* and *Official Ballot Town Council* towns, *Budgetary Town Meeting Towns*, *Official Ballot Town Meeting Towns* and *Representative Town Meeting Towns* are limited to the statutory authority conferred on towns, and does not include the statutory authorities conferred on cities:

- ✓ Towns may make bylaws for under RSA § 31:39 for 15 enumerated subjects, and for making and ordering their prudential affairs; along with many other statutorily subjects (e.g., Conflict of Interest Ordinances, Electioneering, Solid Waste Management, Zoning & Planning, etc.)

The Right-
to-Know
Law



What is a “Meeting”?

RSA 91-A:2



Quorum



Public body



Convenes so that they can communicate contemporaneously



To discuss or act upon a something over which the public body has supervision, control, jurisdiction, or advisory power

When has a Body Convened?



“Convenes such that all participating members are able to communicate with each other contemporaneously.”

- In-person
- Phone
- Email
- Text
- Social Media



Electronic Communication

- Avoid substantive discussions via email
- Circumventing spirit and intent of 91-A
- Less than a quorum communicating by email
- “Reply All”
- Emails are governmental records

Tips for Electronic Communications that Comply with 91-A



- ✓ Never use email for matters related to the business and duties of your public body.
- ✓ Use an administrative person to send an email.
- ✓ Put the recipients' email addresses in the BCC line of the email to prevent the possibility of "Reply All."
- ✓ Use official town/city/school email addresses.
- ✓ Leave discussion and deliberation of official matters of a public meeting, a properly-held nonpublic session, or proper "non-meeting," as discussed later in this chapter.

What is not a “Meeting”? (So-called “non-meeting”)



 Social or other encounter, no decisions

 Collective bargaining

 Consultation with legal counsel

 Circulation of draft documents

 Different than nonpublic session!

What are Requirements of a Public Meeting?



Public notice

Open to the public

Meeting minutes

Posting Requirements



“Open to the Public”



RSA 91-A:2, II

Public's right to record, etc.

No secret ballot voting

Public Comment

Public Meeting Minutes RSA 91-A:2



- Minimum required contents
- Made available within 5 business days
- Posting requirements-RSA 91-A:2, II-b(a)

Beyond 91-A: Tips for Effective Meetings



- Preparation = more effective meetings
- Do you have rules of procedure?
- Agenda
- Circulate materials in advance
- Read packet, think about comments and questions in advance
- No discussions prior to/outside meeting!



Conducting the Meeting



Timing

- Be and start on time

Chair

- Chair's responsibilities

Rules

- Set ground rules

Focus

- Stay on topic

Be mindful

- Don't forget the minute-taker

Meeting Decorum



ALL EYES ARE ON YOU



PAY ATTENTION!



ELECTRONIC MEDIA USE
DURING MEETINGS

Riggins' "Don't's"



- Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting & during a recess period.
- Don't indicate by word or action how you intend to vote during the portion of the hearing devoted to presentations.
- Don't interrupt a presentation until the question period, except for very short and *necessary* clarifying remarks or queries.
- Don't use first names in addressing *anyone at all* during the course of the hearing.
- Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks.

Riggins' "Do's"



Do rotate the seating in some regular manner each successive meeting to prevent a "strong" member from gradually dominating a "weak" member.

Do sit down and have a long soul-searching session with yourself if you find you are consistently "out in left field," that no one seems inclined to second your profound motions, and that you are quite often a minority of one.

Public Comment



No right to speak in meeting, unless you give it to them
(remember hearings are different)



Establish & explain rules, apply consistently



First Amendment: Many restrictions are not acceptable!



Maintain control & order, be
careful of removal

Dealing with (*Sometimes Difficult*) People



Ethics & Conflicts of Interest



What are “Ethics”?



Conflicts of Interest

v.

Incompatibility

Incompatibility of Offices



- RSA 669:7 Incompatibility of Offices (Towns)
- RSA 31:39-A, Local Conflicts Ordinances
- RSA 48:1, Disqualification for Employment (Cities)
- RSA 673:7, Land Use Boards
- RSA 32:15, Budget Committees
- Your Charter!

When do you Have a Conflict?



General Standard (All officials):

- Direct personal or financial interest in outcome
- Immediate & definite
- Atherton v. Concord

Boards Acting in Judicial Capacity (often land use boards):

- General Standard OR
- Juror disqualification
- RSA 673:14, I

Decision-Making



- Legislative Decisions
 - Widely felt
 - Policy decisions
 - Must act solely in interest of public
 - Don't need to be "indifferent"
 - Voters can address conflicts at polls
 - Decision invalidated if deciding vote
- Quasi-Judicial
 - Affect rights of specific petitioner
 - Notify & hear parties
 - Weigh evidence
 - Higher stakes
 - Must be indifferent
 - Conflict, bias, or prejudgment destroys process
 - Decision invalidated; start over!



Common Reasons for Disqualifying Conflicts



Prejudgment

Abutters

Financial Interest in the Outcome

Employment

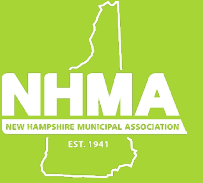
Family & Other Relationships

Independent Knowledge

Questions?



Upcoming Workshops



Registration Now Open for Budget & Finance Workshops!

9:00 am - 4:45 pm, Tuesday, September 12 (Derryfield Country Club, Manchester) and Tuesday, September 19 (Littleton Opera House). Cost is \$100 in-person and \$70 virtual. A must for local officials involved in the budget process.

Registration Open!



Thank you sponsors!



[REGISTRATION NOW OPEN!](#)

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Upcoming Webinars



Municipal Immunities: What They Are, How They Work, and Why They Are Important Webinar

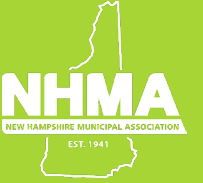
12:00 noon - 1:00 pm, Thursday, September 21, 2023. Join Primex General Counsel Mike Ricker and NHMA's Natch Greyes as they discuss legislative- and judicially-recognized protections for municipal officials including police, fire, and EMTs.

[REGISTER NOW!](#)

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Upcoming Workshops



Join us for ZBA Basics Webinar

12:00 noon - 1:30 pm, Thursday, September 28, 2023. Join NHMA's Stephen Buckley and Jonathan Cowal for a basic overview of the organization, powers, duties, and relevant statutory and case law authority to make your public service both more enjoyable and productive.

REGISTRATION OPEN!

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Upcoming Webinars



University of New Hampshire Library

Learn About UNH's Digitized City and Town Annual Reports Collection Webinar

12:00 noon - 1:00 pm, Tuesday, September 26, 2023. Join Eleta Exline, UNH Scholarly Communication Librarian and Sarah Stinson, UNH Digital Collections Coordinator, who will review the project's history and show us how to best access these vital resources.

REGISTRATION OPEN!

UNH Library Digitizes Town Reports for

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Join us for NHMA's 82nd Annual Conference and Exhibition on Wednesday, November 15 and Thursday, November 16 at the DoubleTree by Hilton Manchester Downtown Hotel.

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Thank you for attending today's webinar!



The New Hampshire Municipal Association is a non-profit, non-partisan association working to strengthen New Hampshire cities and towns and their ability to serve the public as a member-funded, member-governed and member-driven association since 1941. We serve as a resource for information, education and legal services. NHMA is a strong, clear voice advocating for New Hampshire municipal interests.

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