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June 5, 2025

Via Email (btibbetts@windhammaine.us)

Barry Tibbetts, Town Manager
Town of Windham
8 School Road
Windham, ME 04062

RE: Proposed Change to Method of Voting at Town Meeting

Dear Barry:

You have asked us, on behalf of the Town Council, to answer certain questions regarding a proposed modification to the Council-Manager Charter of the Town of Windham (the “Charter”). The proposed modification would change the method of voting on the municipal budget (and other fiscal matters) at a town meeting from an open vote (*i.e.*, by a show of hands) to a secret ballot referendum vote. We have been asked to determine whether the proposed modification would require the appointment of a charter commission, or whether the modification could instead be considered by the Town Council and town voters directly. We have also been asked to outline the process for adopting such a modification in light of our answer to the prior question. We discuss these issues below.

Background

Article V of the Charter requires the Town Manager to submit a proposed municipal budget to the Town Council at least 90 days prior to the beginning of the new fiscal year. The Town Council’s authority over the budget is limited to “the final determination of the total appropriation to be made to each of the several offices, departments and agencies of the Town.” The Town Council is then required to hold a public hearing on the proposed budget, and after the public hearing must review the budget and determine whether to recommend the budget, with or without changes, to Town Meeting. The Town Council must make its recommendation no later than 30 days prior to the beginning of the new fiscal year. If the Town Council fails to act within this timeframe, the budget proposed by the Town Manager is automatically recommended to Town Meeting for passage.

In order for the municipal budget to become effective it must be adopted by “the vote of a majority of those present and entitled to vote” at the annual Town Meeting. The Town Meeting’s budgetary authority is limited; it may not increase the amount of any appropriation or bond issue above the amount recommended by the Town Council.

Analysis

Amendment and Revision of a Municipal Charter Generally

Maine law provides two methods for modifying the contents of a municipal charter. The first method involves “revisions” to municipal charters, which must first be recommended by a charter commission before they can be submitted to the voters in a municipal election. *See* 30-A M.R.S. § 2102. In contrast, “amendments” to municipal charters may be recommended by the municipal officers and sent directly to the voters in a municipal election, without the need for a charter commission. *See* 30-A M.R.S. § 2104.

The distinction between a charter revision and a charter amendment is not defined by statute. However, the Maine Supreme Judicial Court weighed in on this issue in *Fair Elections Portland, Inc. v. City of Portland*. 2021 ME 32, 252 A.3d 504. There, the Law Court held that the main question for separating an amendment from a revision is whether “the proposed change is significant enough to require a (potentially) years-long inquiry into all aspects of the municipality's government.” *Id.* ¶ 32. The Law Court determined that the distinction between an amendment and a revision was primarily one of scope; an amendment, as the smaller and less invasive modification, would not “materially affect the municipality's implementation, in the course of its operations, of major charter provisions that are not mentioned in the proposed amendment,” nor would it “make a profound and fundamental alteration in the essential character or core operations of municipal government.” *Id.* Thus, if a proposed modification of the charter is so broad or deep that it requires a review of the entire charter, it is a revision that requires the establishment of a charter commission. In light of the unique nature of municipal charters, under both 30-A M.R.S. § 2102 and § 2104, the municipal officers are charged with reviewing a proposed charter modification and determining whether it is an amendment or a revision.

The Proposed Modification to the Charter Constitutes An Amendment, Not A Revision

The proposed modification under consideration involves changing the method of approval of the municipal budget (as well as bonds, notes, and supplemental appropriations of \$25,000 or more) by Town Meeting (the “Modification”). Under the current Charter, the vote to approve these matters at Town Meeting is conducted in an open fashion, with votes being cast in full view of the public. The Modification would alter the Charter, instead providing that the vote to approve these items would be conducted via a secret ballot referendum vote on an appointed date.

In light of the analysis provided in *Fair Elections Portland, Inc.*, the Modification is properly considered a charter “amendment” rather than a charter “revision.” The Modification proposes to modify only the manner by which Town Meeting votes on the municipal budget and other budgetary items; it does not propose to alter Town Meeting's role in the budget approval process, nor does it otherwise change the breakdown in governmental authority between the Town Manager, Town Council, or Town Meeting. The Modification also does not limit the authority of Town Meeting, nor provide for its abolition altogether.¹

¹ Consideration of the Modification does not need to comply with the provisions Art. VIII, §4 of the Charter. Section 4 describes the process that must be utilized in order to “discontinue the Town Meeting.” The Modification does not seek to discontinue the Town Meeting, rather it only seeks to modify the method

In sum, because the Modification does not implicate "...major charter provisions that are not mentioned in the proposed amendment" nor does it "make a profound and fundamental alteration in the essential character or core operations of municipal government," it only constitutes a charter amendment that may be placed directly before voters by the Council.

Process for Enactment of a Charter Amendment

Under 30-A M.R.S. § 2104, for the Town Council to initiate a charter amendment, the Council must first provide public notice and hold a public hearing on the proposed amendment(s). Public notice of the hearing must be provided no less than 7 days in advance of the hearing and such notice must contain the text of the proposed amendment and a brief explanation of the amendment's purpose. After the public hearing has been conducted, the Town Council has 7 days to order the amendment placed on the ballot for either (1) the next regularly scheduled municipal election (so long as that election is held at least 30 days after the order is passed) or (2) at a special election to be held at least 30 days after the passage of the order.

At least two weeks prior to election day, a copy of the proposed amendment must be posted for public viewing. Voting on the proposed amendment is by secret ballot, in the same manner as other elections conducted by the Town. If a majority of the votes cast at the referendum election approve the charter amendment, the amendment becomes effective on the date determined by the Council, but the effective date may be no later than the first day of the next municipal year. In addition, a charter amendment is only valid if the total number of votes cast (for and against the amendment) are equal to at least 30% of the total number of votes cast in Windham during the previous gubernatorial election.

Proposed Amendment

In light of the foregoing, should the Council decide to move forward with a proposed amendment to the Charter, we would recommend that the following amendment be considered:

Shall the municipality approve the charter amendment reprinted below?²

ARTICLE VIII – THE TOWN MEETING

•••

Section 2

WHEN ACTION BY TOWN MEETING REQUIRED. The annual budget, as provided in Article V; any appropriation of twenty-five thousand dollars (\$25,000) or more in addition to or supplementary to the annual budget appropriation; or the issuance of bonds or notes, except notes in anticipation of taxes to be paid within the fiscal year in which issued; shall become effective only after it has they have been adopted at a Town Meeting, conducted by secret ballot, by the majority

of voting on the municipal budget at the Town Meeting. Because the Modification does not seek to end the Town Meeting, the provisions of Section 4 do not apply to its consideration.

² The form of this question is required by statute, 30-A M.R.S. § 2105(2).

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~~of votes cast, by the vote of a majority of those present and entitled to vote at such meeting. The Town Meeting shall not increase the amount of any appropriation recommended by the Council and shall not increase the amount of any bond issue above the amount recommended by the Council.~~

Considerations For Future Budget Processes

Finally, should the Charter be amended as proposed, the Council should be aware of the need to start the budgetary process earlier in the year, in order to legally hold an annual Town Meeting “on the first Saturday following the second Tuesday in June.” Windham, Me. Charter Art. VIII, § 1.

Although the Charter requires the Council to recommend the budget to Town Meeting no later than 30 days prior to the beginning of the fiscal year, this timeframe will not allow sufficient time for referendum ballots to be printed and made available – as they must be available to requesters at least 30 days prior to the date of Town Meeting. *See 21-A M.R.S. § 752.* We would therefore recommend that the Council plan on holding its public hearing and recommendation vote on the budget no fewer than 75 days prior to the date of Town Meeting, with the Town Manager’s submittal of the proposed budget to the Council similarly moved earlier in the year. Further amendments to Article V could assist in clarifying these issues.

Conclusion

We trust the foregoing is responsive to the Town Council’s inquiries about this matter. Please contact us directly with any questions.

Sincerely,



Benjamin T. McCall

Tammy Hodgman

From: Barry A. Tibbets
Sent: Monday, June 9, 2025 5:09 PM
To: Tammy Hodgman; Robert J. Burns; Susan R. Rossignol; Levi Robinson
Cc: Barry A. Tibbets
Subject: Proposed Charter Change
Attachments: 2025.06.05 Ltr TM re charter amendment to town meeting procedure(11937907.1).pdf

Begin forwarded message:

From: "Benjamin T. McCall" <bmccall@dwmlaw.com>
Subject: Proposed Charter Change
Date: June 5, 2025 at 9:44:32 AM EDT
To: "Barry A. Tibbets" <batibbets@windhammaine.us>
Cc: "Robert J. Burns" <rjburns@windhammaine.us>

External sender <bmccall@dwmlaw.com>

Make sure you trust this sender before taking any actions.

Barry –

Attached is a memo regarding the proposed charter change, which we believe to be an amendment, and not a revision that would require a charter commission. Please note that I've included proposed amendment language in this letter, although additional sections of the Charter may need to be amended to account for the longer runup time between presentation of the budget to the Council and the adoption vote by Town Meeting. Also note that I have assumed that the Council wishes Town Meeting to vote by secret ballot on all matters that require TM approval, *i.e.*, budget, bonds and notes, and supplemental expenditures of \$25K+. It's possible to carve the budget out, but the proposed amendment does not do that.

Please let me know if you have any questions in advance of the 12th.

Thanks,
Ben

Benjamin T. McCall
Attorney

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ATTORNEYS AT LAW

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