



Town of Merrimack Charter Commission

FINAL REPORT Per RSA 49-B:4, V

EXECUTIVE SUMMARY

The Merrimack Charter (hereafter referred to as “Charter”) is a customized, flexible, and dynamic document for the government of the Town of Merrimack. The Charter was developed under the provisions of RSA 49-B, which “...provides a vehicle whereby a municipality may adopt a form of government that best addresses local needs.” The Merrimack Charter Commission (hereafter referred to as “Commission”) conducted a careful review of the Town’s current form, New Hampshire State Law, and other New Hampshire municipal charters before embarking upon the drafting of the document submitted to the voters for approval. The Charter moves Merrimack away from the “one-size fits all” nature of municipal government embodied in the myriad of statutes, rules, and regulations at the state level. Residents of Merrimack will have their document of governance to refer to and rely upon in the future.

The Charter provides for better representation, both in the governing body and through the clearly delineated processes for the adoption of ordinances and citizen initiatives. The Charter establishes a seven (7) member Town Council to replace the current five (5) member Board of Selectmen as the governing body. The Town Council will have legislative authority on most matters, except the appropriations authority which will remain with the voters through the Official Ballot process currently in use. While the Charter provides for more responsibility for the Council, the opportunities for public input are much broader than under the current form through the provisions of Article X, which provide for four distinct types of public participation in the affairs of the Town: individual petitions, group petitions signed by at least 50 voters, initiative petitions that may propose ordinances and requires 500 signatures, and the referendum petition to amend or repeal measures passed by the Council and requires 1,250 signatures. Registered voters will be able to submit petition articles for appropriations only, with the 25 signatures provided for in RSA 39:3. This represents a change from the current form, which allows the voters to petition for any warrant article.

The Charter clearly defines the roles of the Council and the Town Manager. The Town Manager will be responsible for the administration of Town departments. The Charter provides language against direct interference by individual Council members in the administrative affairs of the Town while retaining oversight and policy making authority with the Town Council as a body. Failure to abide by the non-interference provision may result in the forfeiture of office by a Council member. To insure the integrity of elected and appointed officials, the Charter memorializes the current Conflict of Interest/Ethics Ordinance in Article IX.

The Charter keeps spending in the hands of the voters through the continued use of the Deliberative Session to discuss, debate, and amend appropriation articles. The Charter continues the use of the Official Ballot during all day voting on appropriation matters. As another means of streamlining the operations of the Town, the Charter rescinds the adoption of the Municipal Budget Act for the Town and eliminates the Municipal Budget Committee established in 1979. The Commission is acutely aware of the contributions and service of members of the Committee since its inception. However, the professionalism of the Town staff and the vigilance of the Board of Selectmen over budgetary matters results in budgets that are well crafted and frugal. As a result, the changes proposed by the Budget Committee are often relatively minor, yet require additional staff time and administrative resources which the Commission feels could be more effectively applied to more efficiently addressing the operations of the Town departments. It will also provide the Council with additional time to address the issues before it.

This Charter is the culmination of over 18 months of effort that included two Town votes; 30 Commission regular meetings; 16 Commission subcommittee meetings; three public hearings; and input from elected and appointed officials from other charter communities, the Town of Merrimack, and those residents who attended Commission meetings. The Charter Commission provided unprecedented access to the proceedings of the Commission through normal communication channels required under New Hampshire State Law, the Commission's web site, and public access television. The Commission has given careful consideration to all of the information that it has gathered and proposes the attached Charter to the voters for approval. The Merrimack Charter Commission's deliberations have been strongly influenced by the voice of the voters in approving the formation of the Commission at two separate votes of the community. The Commission has also been influenced by a strong desire to have a form of government that can meet the increasing demands of the present and of the future, and best meets the needs of the Town of Merrimack as provided in RSA 49-B:1.

If adopted by the voters, the Charter takes effect on July 1, 2006. The members of the Board of Selectmen holding office on July 1, 2006 will continue to serve as Town Councilors until their respective terms expire. The Charter calls for a Special Election on June 13, 2006 to elect the two additional members to the Town Council. Many of the procedures and policies in use on June 30, 2006 will continue with the adoption of the Charter. A comparison of the current form and the form established by the Charter is appended to this report.

In accordance with the provision of New Hampshire State Law, the Charter was reviewed by the Office of the Attorney General, the Secretary of State, and the Department of Revenue Administration. As a result of this review, 18 substantial changes were made by the Commission so that the Charter conforms to New Hampshire State Laws. In the end, the State Agencies had no objections to the Charter. In accordance with New Hampshire State Law, the Charter is to be presented to the voters for their approval. A copy of the State's joint letter is appended to this report.

METHODOLOGY

The nine (9) members of the Charter Commission were elected from among 27 candidates on June 21, 2005. The Commission operates under the strict guidance and timelines of RSA 49-B. The law required that the Commission's Draft Charter be transmitted to the Town Clerk 180 days after election.

The Commission held its first meeting on July 12, 2005 and elected a chair, vice chair, and secretary. The Commission gathered municipal charters in effect in New Hampshire, as well as the proposed Charter of the Town of Goffstown. The Commission purchased copies of the Model Charter and Guide for Commissions from the National Civic League as well as consulting with the on-going Charter Commission in Dover, NH and members of the Goffstown Commission for guidance on crafting a charter and rules of procedure.

The Commission met with members of town and city councils and appointed officials from towns that currently operate under one of the charter forms provided in New Hampshire State Law. These guests provided valuable resources, advice, and experience that the Commission has found very helpful as it moved through its important task.

The Commission also met with many of the appointed and elected officials of the Town of Merrimack, the Merrimack School District, and the Merrimack Village District who provided their opinions and insights on the charter process and as to how a charter may affect their operations. These participants also provided the Commission with context and insights into the actual operations of town boards and commissions that again were invaluable as the Commission moved through its tasks.

The Commission held the one required Public Meeting on July 26, 2005 to elicit public input on the current government in Merrimack, as well as the possibilities that a charter might provide. The Commission held a second public hearing on September 13, 2005 after the Commission had voted to begin drafting a charter that would provide for a Council-Manager form of government, but before the Commission had undertaken the other required and optional provisions of a Charter. A third hearing was held on November 8, 2005 after the Commission had substantially completed the bulk of its work, but before it had finalized the finance article of the Charter.

During its deliberations, the Commission formed five subcommittees to review: the city charter forms under RSA 49-C; the town charter forms under 49-D; Merrimack's current form of government; to review the possibility of proposing an Advisory Budget Committee; and to develop a public awareness effort to acquaint the voters with the Charter. Each government form subcommittee filed a report and the Advisory Budget Subcommittee submitted minutes which are available on the Commission's web site. The Commission reviewed the work of each government form subcommittee and developed a matrix to compare and contrast the provisions of the law for each form of government. The Public Awareness Subcommittee will continue its work to educate the voters until the April voting.

After requesting proposals for legal services from six law firms, the Commission selected Allan Krans, Esquire to advise the Commission on legal issues and to review the draft language for legality, consistency, and efficiency. To date, the Commission made seven queries to counsel regarding charter provisions and/or language and met with Attorney Krans on at least three occasions to review the Commission's work. Attorney Krans reviewed the draft articles and provided suggestions for clarifying language. Attorney Krans also provided assistance in dealing with the three state agencies during their review of the Draft Charter.

Through the efforts of Vice Chair Heather Anderson and resident Brian McCarthy, the Commission established a web page which contains state statutes on charters, other New Hampshire municipal and school charters, meeting notices and schedules, agendas, minutes, and the Charter language after it was reviewed by the Commission. Residents of Merrimack

have the ability to comment directly to the entire Commission or individual members through the web site, as well as to subscribe to a list serve for regular updates.

All meetings of the Commission, except one, have been broadcast live, recorded, and rebroadcast as part of the Government Access channel scheduled programming. Several residents have taken the time to attend regular Commission meetings and provide their comments and suggestions to the Commission.

The Commission established rules of procedure and a public comment protocol. One of the procedural rules provided that for any item to be considered for the Charter, it had to receive a supermajority of Commissioner votes. Therefore, when all nine members are present at a meeting, it took at least six votes to move a section or article or an amendment to the Charter. When fewer than nine members are in attendance, the motion must receive a majority of the votes plus one to move it to the Charter.

When the Commission began drafting the language for the Charter, the language from town charters was used exclusively, since all of the city charters were adopted through action by the state legislature. In addition, New Hampshire State Law provides six options under RSA 49-D for a town charter, rather than the two options provided to city charters under RSA 49-C.

With language for sections of each article presented, the Commission compared and contrasted the provisions from the town charters and adopted language suited to Merrimack's needs. The Commission further tailored the Charter taking into consideration the requirements of New Hampshire State Law; the experience of Commission members; and the information, insights, and suggestions provided by the appointed and elected officials invited to speak. Input from the public hearings and individual communications to the Commission and Commission members was also taken into consideration.

A formal vote was taken on each Charter article and section. The Commission took the additional step of compiling the approved language for each Charter article and section and reviewed it at the next regular meeting. The language was then moved to the Charter and sent to the Commission's counsel for review.

The Charter has 12 articles:

- I. Incorporation / Town Form of Government / Power
- II. Glossary of Terms
- III. Elections / Election Officials / Conduct of Elections
- IV. Governing Board
- V. Ordinances
- VI. Administrative and Judicial Boards
- VII. Administration of Government
- VIII. Finance
- IX. Code of Conduct / Code of Ethics
- X. Citizen Initiatives
- XI. General Provisions
- XII. Transitional Provisions

DISCUSSION

The Selectmen form of government has served the Town for over 200 years. The last change to this form was in 1978 when the Board was increased from three to five members. The Town's population at the time was about 14,000. Today, Merrimack's population exceeds 27,000. The Planning Board and Master Plan Committee estimate the so-called "build out" population of the Town to exceed 32,000 with current density and zoning.

At two separate elections, the residents of Merrimack voted to form a charter commission. These votes indicated a general desire to review the current form of government and to explore other options. The Commission is also acutely aware of the growth issues and the need for more timely action to meet the needs of the community now and in the future. It was with these factors, as well as others exposed during the Commission's research, that led to Commission to move forward with the drafting of this Charter.

The current Town government form we operate under today is not covered by any particular document or law. It is governed by a number of documents listed below:

1. The Town started out in the mid-1700's with two Charters from the King of England that determined the Town's original geographic boundaries.
2. While New Hampshire has a so-called Home Rule provision in the state constitution, municipal government in New Hampshire is a creation of the legislature and the operations of cities and towns are governed by a large number of laws, rules, and regulations that cover everything from terms of office, to assessing, to budgeting, to borrowing money, to the operations of the annual Deliberative Session and Ballot Voting.
3. While not required under New Hampshire State Law and the present form of government, the Town established an Administrative Code a few years after the Town voted to increase the number of Selectmen from three to five, adopted the Town Manager form provided for in RSA 37, and established a Municipal Budget Committee under the provisions of RSA 32.
4. Throughout its existence, the Town through the Town Meeting process, established Town Ordinances. Through the limited powers granted by the state legislature, the Board of Selectmen established various Procedures, Rules and By-laws to ease governance and administration of the Town.
5. Other procedures, policies, and practices were never formally adopted. Simply at times, the Town did things because "We've always done it this way!"

These sources of power and authority, methods of operation, and local custom worked well when the community was smaller and largely agrarian. Since 1970, the Town population has grown rapidly, become part of a regional economy where 80% of its working residents commute to jobs outside the Town. Communications has become almost instantaneous and the speed of change and the requirement for swift action has burdened the public and the private sector. The ability to react quickly to these changes is not fostered by an annual meeting process that requires the consideration of a large, cumbersome and sometimes disparate, number of proposals. It does not foster strategic thinking and action, but relies on the minutia of an antiquated process that forces elected and appointed officials and the public to only consider the immediate future, usually a year forward.

The current Selectman form is constrained by New Hampshire State Law that allows a maximum of five members on the Board. One of the first decisions of the Commission was to increase the representation of the Town through the adoption of a seven member Town Council elected at-large for three-year staggered terms. This form and number provides the opportunity for broader representation on the governing board, thereby providing more voices in the governance of the Town. The Commission gave consideration to establishing wards/districts but chose to retain the current at-large method to ensure that the interests of the entire town are considered by the Council not just the potentially narrower interests of a ward/district.

Concerned with the need for a more responsive governing board, now and in the future, the Charter establishes a Town Council that will have legislative authority for all matters other than appropriations. This allows the Town to operate more like a business by offering quicker reaction time on issues and places authority with the body that has the responsibility for implementation of policy.

The Commission found other constraints as it moved through its deliberations. While New Hampshire State Law allows for some forms of government, these forms are limited in their ability to adopt processes that are more meaningful for the Town. The Commission would have preferred to be able to have the Town Council move the annual budget directly to the voters after ample public discussion but without the time and expense required by a Deliberative Session. Sadly, New Hampshire State Law does not allow for this method of budget adoption at this time.

The Commission's concern over the ability of the residents to continue their involvement in the activities of the governing board is reflected in Article X, Citizen Initiatives. While public comment/input has long been a regular part of the current governing board's agenda, it has never been required. The Charter establishes public comment as a part of the Council's responsibilities. The process for the adoption of Ordinances requires a first reading, a public hearing that is required to be well publicized, and a seven day delay after the hearing before an ordinance may be adopted.

The Commission purposely included two new and additional means for public participation and input through Initiative and Referendum petitions that are classified as optional provisions in the enabling legislation. These new opportunities can provide the voters with additional opportunities to shape the governance landscape. As such, they do require a higher level of participation to use the process. Since the Council is elected to represent the voters, these processes essentially are a potential countervailing force that should not be used frivolously or lightly, hence the higher thresholds for their use. In addition, these methods require a higher level of responsibility and participation by the voters. The Commission is confident that if the Council is ignoring the wishes of the electorate, the voters will be able to generate the support needed to use these new methods. The Commission's understanding of the use of these processes in other cities and towns confirms that the support will be there for important matters regardless of the thresholds. These petition forms will require some public education on their purpose and use. The petition forms can be a more direct approach to the Council because of the authority vested in the Council by the Charter. Their use may allow for addressing issues faster, more effectively and at less cost.

Additionally, the Commission retained a limited form of the petition process of RSA 39:3 that permits 25 voters to put any appropriation item before the voters.

The steady decline in participation at the Town Meeting and the successor Deliberative Session remains in stark contrast to the growth in the population (over 27,000), registered voters (over 17,000) and total Town appropriations (over \$27 million). The decline in both forms of annual meetings, have, at times, allowed small interest groups to disproportionately influence issues and appropriations, particularly if the issue was part of a special warrant article.

While the state agencies are sympathetic to these concerns, a quorum of voters at the Deliberative Session to amend any articles is currently not allowed under New Hampshire State Law. The Draft Charter was amended and the quorum was removed. The Deliberative Session will continue to operate in its current form and items pertaining to appropriations may be presented, discussed, and amended before being placed on the ballot for a vote.

The current Town Manager form under RSA 37 does not have clear lines of authority and responsibility. This has led Boards to involve themselves in the minutia of administration rather than concentrating on policy issues. The Charter proposes to reduce the involvement of the Town Council, and place more responsibility and authority in hands of the Town Manager in regards to the day-to-day operations of the Town's administrative functions. The failure of a Councilor to respect this separation through the added non-interference language can lead to that Councilor being removed from office.

The Charter further requires a review of the Town organization and Administrative Code on a regular basis, something that is neither required nor has not been done systematically under the present form since 1979.

The Charter takes the additional step of eliminating the Municipal Budget Committee. Some of the reasons for this decision are:

1. The residents of the Town are well educated and sophisticated.
2. The Town's staff is experienced, professional, and has a sound sense of the people that they serve.
3. The Town portion of the budget has rarely exceeded 25% of the total tax rate since 1979 and strongly indicates frugality since the Town has undertaken its share of capital projects and still maintains a stable tax rate.
4. The retention of the Official Ballot continues to provide the voters with a direct voice in the fiscal affairs of the community.
5. The Budget Committee is an additional layer in the budget development process that requires a large amount of staff time and effort.

This does not denigrate or lessen the dedication and contributions of members on the committee. Three of the Commissioners are serving on the Budget Committee and two others have served on the Budget Committee.

Our current form of government can only be changed through the Legislature with a change in one of the many RSA's that define our current Town government. By adopting a charter, the residents of Merrimack will be able to have a truer form of Home-Rule and will be able to better define a form of government that suits the Town. A local vote can modify or adjust the charter as time and needs dictate a change is necessary. The ability to amend remains local within the broader boundaries a charter form provides as compared to the non-charter form of Town government we have now.

The process for amending the charter is adopted from New Hampshire State Law. There are two methods available. The first is a process that is initiated by the Council by placing the question on the ballot at the next municipal election. The second method requires 20% of the voters in the last municipal election to petition to put the question of amendment on the ballot at the next municipal election.

The Charter transitions the current form of government and its office holders to the Town Council form. The Charter requires a Special Election on June 13, 2006 to elect the two additional Council members required under the Charter, one for three years and one for two years. This retains the 3-2-2 stagger for office holders. The Charter provides continuity and experience by retaining Board of Selectmen members in office on June 30, 2006 for remainder of their terms. The Charter retains almost all personnel, codes, policies, and procedures currently in place.

The Commission feels that this provides for an orderly and predictable implementation without losing the benefit of the knowledge and experience of the dedicated officials of the community.

The Commission wishes to take this opportunity to thank the voters of Merrimack, as well as the elected and appointed officials for their assistance in this historic process.