



# Conway: Forms of Government Types and Options

Natch Greyes, Government Affairs Counsel, NHMA



# Agenda

- Charter Options
- Laws Applicable to All Charters
- Some Decisions to Make
- Questions





# Charter Options

# Charter Options, Generally:

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- Five different types of charter for towns to choose among.
  - Options found in RSA 48-D:3 (and on next slide).
- Additionally, towns may be “traditional” or “SB2.”
  - Conway is currently an SB2 town.
- An alternative to “town” is to reincorporate as a “city.”



**FORMS OF CHARTER TOWN GOVERNMENT: RSA 49-D**

I	Town council	Town council	Town council	Charter may reserve authority to the voters to approve bond issues and amend zoning ordinance.	Derry, Durham
I-a	Official ballot town council	Town council <u>and</u> official ballot town meeting (shared)	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.	Hooksett, Londonderry, Merrimack, Newmarket
II	Budgetary town meeting	Town council; open town meeting for budget only	Town council	Town meeting's only authority is to vote on operating budget but charter may reserve authority to the voters to approve bond issues and amend zoning ordinance. All other authority is vested in the council.	Bedford
II-a	Official ballot town meeting	Town meeting	Board of selectmen	Charter provides for voting on some or all warrant articles by official ballot. Open town meeting votes on all other legislative matters.	Peterborough
III	Representative town meeting	Representative town meeting	Board of selectmen	Same as open town meeting, except that individuals are elected to participate in town meeting.	None



## Some Confusion: RSA 49-D:2 vs 49-D:3

- RSA 49-D enacted in 1991. At that time, there were 3 options – all were listed in D:3 and referenced in D:2.
- As two more options were added, D:3 was updated but D:2 was not updated...
- SB 111, which is on the governor's desk, clarifies that D:2 is not meant to modify the options under D:3, but simply reference those options as part of further instructions about charter options.
- SB 111 hasn't yet been signed by the Governor, but we are hopeful that it will be.



# Option I: Pure Town Council Town

- Just like a city (with one small change), but still called a town.
- Assuming, SB 111 signed, 49-D:2 will read that this option:
  - A town charter providing for the form of legislative body pursuant to 49-D:3, I shall have the same powers and authorities as a city council under RSA 49-C, subject to the provisions of RSA 41:16.
- RSA 41:16 provides that the town clerk shall continue to be an elected position. (Cities appoint their clerks.)
- Examples: Derry & Durham.

# In Town Council Towns, the Charter Must Specify:

At-large or district representation or a combination thereof;

The manner of filling vacancies;

Powers of nomination, appointment, and confirmation;

Requirements for attendance and quorum;

Any domicile or eligibility requirements of up to one year in the town or district and continued domicile during a term;

Specific procedures for the preparation, presentation, public hearing, and adoption of annual budgets and designation of a fiscal year;

Procedures for issuing bonds and notes pursuant to RSA 33:8-e;

An annual municipal election date pursuant to RSA 669:1;

Bonding of certain town officials and employees where not required by general law; and

Requirements for periodic independent audits of all town financial matters by a certified public accountant.





# Other Provisions

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- The charter may specify a wide variety of other matters, but only the previously listed ones are required.
- It is, however, a good idea to consider matters such as:
  - citizen powers of initiative, referendum and recall as described in RSA 49-C,
  - a purchasing system, and
  - town investment policy.



# Option I-a: Official Ballot Town Council

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- Still have a town meeting, but the power of town meeting is diminished and all votes are by official ballot.
- The charter specifies what the town meeting votes on via official ballot, with everything else reserved for the council.
- Importantly, the charter may allow both budget and non-budget items to be placed on the official ballot.
- City-government ‘lite’ or SB2 ‘enhanced.’
- Examples: Hooksett, Londonderry, Merrimack, Newmarket.



# Official Ballot Town Council Charters Must Also Specify Certain Budgetary Items:

- A finalization process for the annual budget: the process for public hearings, debate, discussion, and amendment of questions to be placed on the official ballot (*i.e.* everything at a SB2 Deliberative Session).
- The procedures for the transfer of funds among various departments, funds, accounts, and agencies as may be necessary during the year
- The applicability of the official ballot procedure to special elections.
- Whether the majority vote required to approve bonds or notes is 2/3 or 3/5. (If a charter does not specify which majority vote is required, then the required majority vote shall be 2/3.)

# Option II: Official Budget Town Meeting

- Similar to Option I-a, except that it is only the budget that is voted on by town meeting and it is an 'open' town meeting – *i.e.* traditional town meeting (not official ballot).
- **However**, an official budget town meeting charter may reserve the ability of town meeting to approve amendments to land use ordinances and approval of bond issues.
- Everything else is controlled by the governing body.
- Examples: Bedford.



# Option II-a: Official Ballot Town Meeting

- Charter specifies which items are voted on by official ballot and which items are voted on at 'open meeting,' *i.e.* traditional town meeting.
- Basically, SB2 'lite.'
- However, charter can specify:
  - which items are voted on at an open meeting and which go on the official ballot;
  - whether to use a default budget, and how to define it;
  - and the process for budget preparation and hearings.
- Examples: Peterborough.

# Defining the Default Budget in the Charter?

Defining the default budget and its process may be something worth considering, if it is relevant to your local government.

Not defining the default budget and its process, if relevant, subjects it to changes in state law.

Londonderry – an official ballot town council town (I-a) – chose to define the default budget process in their charter as a result of the changes enacted in 2018.

# Default Budget Historical Timeline

Since 1995, 72 towns and 81 school districts have adopted the SB2 form of annual meeting.

Source: DRA 12/31/2020

1995

- RSA 40:12-14 was created to provide an alternative to the traditional Town/school Meeting.
- The annual meeting cannot end until a budget is adopted, this provided a method to essentially finalize a budget in the event of a “no” vote.
- The default budget is necessary in the event that the voters reject the proposed operating budget at the second (ballot) session.

2004

- Default budget calculation clarified in SB 219.

- Several NH Court cases and over a dozen failed attempts to propose legislation to amend the default budget law, resulted changes passed in 2018.

2018 

- Chapter 313 ( SB 342) and Chapter 241 ( HB 1307) re-defined how the default budget must be calculated.

Note: Bills are filed every session to amend the default budget calculation, including this year.

# Default Budget Procedure



- ❖ The preparation and determination of the default budget, including one-time expenditures, capital project appropriations, rests with exclusively with the governing body -unless it has been delegated to the budget committee.
- ❖ Disclosed and presented for questions and discussion at first budget hearing;
- ❖ Line-item changes must be available at budget hearing:
  - ❖ Appropriations in last year's budget;
  - ❖ Reductions and increases, including identification of specific items that constitute a change by account code and the reason for change
  - ❖ One-time expenditures
  - ❖ Reductions for eliminated positions
- ❖ Discussion and debate of default budget at deliberative session.
- ❖ **The default budget may not be amended by voters.**



# Default Budget Terms Defined

“One-time expenditures”: Appropriations not likely to recur in the succeeding budget.

“Contracts”: Contracts previously approved, in the amount so approved, by the legislative body in either the operating budget authorized for the previous year or in a separate warrant article for a previous year.

“Eliminated positions” does not include vacant positions under recruitment or position redefined in the proposed operating budget.

# Future of the Default Budget

**Bills are filed every session to amend the default budget calculation, including this legislative session.**

- At the time SB2 was passed that it was not intended as a tax reduction mechanism but rather a formula for keeping the town/school running if the voters did not approve the proposed operating budget.
- Legislators are still looking for mechanisms to reduce the amount of the default budget so it can never be higher than the proposed operating budget.

Changes to the definition and wording of SB2 raise questions about whether SB2 as it now exists is what voters adopted.

# Option III: Representative Town Government



Traditional Town Meeting but via Representatives.



Governing body remains Select Board, and Town Meeting retains its powers, but representatives elected to serve at town meeting.



Charter specifies how someone may become a representative, the qualifications for office (within the statutory limits), what happens if there is a vacancy, etc.



Examples: None.



# Laws Applicable to All Charters



## Charter Limitations: Court Cases

- No Home Rule
- Charter Cannot Exceed or Conflict with State Statute
  - *Appeal of Barry*, 143 N.H. 161 (1998): City retirement system not subject to change by charter amendment.
  - *Hooksett v. Baines*, 148 N.H. 625 (2002): Charter could not impose term limits on elected local officials.
  - *Manchester School District v. City of Manchester*, 150 N.H. 664 (2004): Charter could not make school district a city department.

## RSA 49-D:4 Non-Interference By Elected Body

The elected body shall act in all matters as a body, and shall not seek individually to influence the official acts of the chief administrative officer, or any other official, or to direct or request, except in writing, the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers of their duties. Any member violating the provisions of this section, as determined through procedures established in the charter, shall forfeit his office.

## RSA 49-D:5 Transition Provisions

Any charter adopted pursuant to this chapter may provide for the efficient and timely transition to any new form of government including, but not limited to, the holding of any necessary special elections, the phasing in of any aspect of the new form of government, expenditure authority during any transition and the integration of the remaining terms of office of any existing municipal officers as part of any new elected body established by the charter.



# Some Decisions to Make

Basic Questions to Answers



# Two Key Questions for Commission

How Much Authority (Generally) Should Be Granted to the Governing Body?

- More Authority = Governing Body that Looks More like a City Council.
- Less Authority = Governing Body that Looks More like a Traditional Select Board.

What Should the Budget Process Look like for Conway?

- Should the Budget Be Determined and Voted on by the Governing Body and/or Budget Committee?
- Should the Budget Ultimately Be Determined at an Open Town Meeting?
- Or Should the Budget Determination Land In-Between Those Two Options?

# Charters Give Municipalities Great Flexibility

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- Answering the two key questions will help determine which form of charter is most appropriate for YOUR municipality.
- It is entirely possible to preserve existing features of town government, such as budget committees, if that is desired.
- It is also possible to modify existing features of town government to make them work better for your change in government, *e.g.* budget processes.
- Other charter communities can tell you how their systems work and give you some ideas about what may work for you.



# The Budget Process: Key Players

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- Legislative Body
- Governing Body
- Budget Committee:  
Advisory v. Official





# Integrating Budget Committees: Examples

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- **Londonderry:** “The Londonderry Budget Committee consists of 7 members who are elected to three-year staggered terms. The Committee’s charter is to advise the Town Council, the School Board, and the Town of Londonderry on matters related to their budgets, providing a “third party” taxpayer’s perspective.”
- **Hooksett:** Nine elected members and four members appointed by the Town Council charged with the authority under RSA 32:5.
- **Peterborough:** Budget Committee: Review and evaluate warrant articles based on short and long term ramifications, and make recommendations pertaining to same.

# Questions?

## *Thank You!*

Natch Greyes

Government Affairs Counsel

603-224-7447

[ngreyes@nhmunicipal.org](mailto:ngreyes@nhmunicipal.org)

