

TOWN OF BENNINGTON
INFORMATIONAL FORUM
CHARTER REVIEW COMMITTEE MEETING
BENNINGTON FIRE FACILITY
130 RIVER STREET
BENNINGTON, VERMONT 05201
SEPTEMBER 27, 2017
MINUTES

COMMITTEE MEMBERS PRESENT: Sean-Marie Oller-Co-Chair; Robert Plunkett-Co-Chair; P. Lynn Green; and Robert Ebert.

COMMITTEE MEMBERS ABSENT: Daniel Malmborg; Jonathan Cohen; and Michael Keane.

ALSO PRESENT: Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator; Cassandra Barbeau-Town Clerk; Joan Pinsonnault-Treasurer; Select Board Members-Tom Jacobs, Jeannie Jenkins, Jeanne Conner, and Jim Carroll; Jim Barlow-Attorney; Michael Bethel; Joey Kulkin; 6 citizens; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 5:30 pm, Co-Chair Sean-Marie Oller and Co-Chair Robert Plunkett called the meeting to order.

1. PRESENTATION AND DISCUSSION LED BY ATTORNEY JAMES BARLOW

Jim Barlow, shared his background with the Committee and is now an attorney specializing in Vermont Local Government Law. The following are the highlights of his presentation and questions will be taken throughout:

Municipal Governance Charter -

- All town charters are available online at the Legislature's webpage in the Statute section under Title 24A.
- Charter amendment must follow a statutory process.
- In 39 states, local governments are free to pass laws and ordinances as they see fit, limited only by the bounds of the state and federal constitutions. However, Vermont is not one of them.
- Vermont municipalities only have those powers specifically delegated to them by the Legislature. "We are not given the benefit of a doubt."
- The Bennington Charter is a grant of state law, approved by local voters and the Legislature that sets out specific laws for operation of local government in a municipality.
- There are 9 cities, 52 towns and 50 village municipal governance charters in Vermont that operate within the boundaries of their respective municipalities.

Question: Mr. Plunkett - Is a city charter different from a town charter?

Answer: Mr. Barlow - They are the same document in the way that they come into being and how they are approved, but "typically, a city charter is more representational and less participatory". "You are what you chose to call yourself."

- Amending the Bennington Charter is amending the laws of the State of Vermont as they apply to Bennington.
- If there is a conflict between a Town Charter and the State Statute, the more specific statute controls. For example, the fact that Bennington elects 7 Select Board members trumps the State Statute of 3 or 5 members.
- Charters need to be kept current because general law in the State of Vermont may move faster than charters.
- Four characteristics define a local governance model: What officers are elected and which are appointed?; Who appoints, controls and directs municipal employees?; How are the budget and tax rate set?; What powers do the voters have?.
- Bennington voters are given the authority to recall an elected official, whereas, this is not allowed in most municipalities or State law. Statutory process for this can be overridden within a town's charter.
- Basic statutory town government model has at least 16 elected town officers are mandatory unless opted out in the Town Charter: Selectboard; Clerk; Treasurer; Constable; Town Agent; Listers; Auditors; Grand Juror; Moderator; Delinquent Tax Collector.
- The Statutory Form of Vermont Town Government is a horizontal organizational chart - one elected position does not answer to another.
- Most municipalities have this most inclusive horizontal organization chart where there is no mayor or town manager.
- The voters' primary authority is the election of town officers and adoption of the town budget.
- Bennington is one of 16 towns that have a recall process for elected officials.
- Voters adopt the budget; Selectboard sets the tax rate and administers the budget with some measure of discretion to deviate from the budget as required by circumstances during the fiscal year.
- Voters also have the right to disapprove town ordinances, adopt zoning bylaws, and approve borrowing, etc.
- Town government relies heavily on political remedies and "social control" which is as much tradition as it is statute.

Question: Ms. Green - Can a provision for excessive absenteeism also be written into the charter?

Answer: Mr. Barlow - Yes.

Question: Mr. Ebert - For what purpose would a town include an absenteeism provision?

Answer: Mr. Barlow - Why did you do that? would be a question to town's that have done it.

- Town government has a high level of accountability and transparency making the process very slow. The lack of time, expertise, and resources within selectboards also impedes the efficiency. Nevertheless, 175 Vermont towns operate under this model.
- In the Statutory Form of Vermont Town Government, the selectboard operates like the proprietor of a small business.

Municipal Manager Form of Local Government -

- This is the most common variation from the basic statutory model.

- There are two ways a town can adopt the manager form of government - 1. A vote under State statute; and 2. The adoption of a charter that provides for a town manager.
- Bennington, along with about 53 other Vermont municipalities, has adopted the manager form of government through a local vote of a municipal governance charter.
- The Selectboard retains its quasi-judicial and legislative functions but the administrative and executive responsibilities are vested in the town manager who reports to the selectboard.
- The selectboard members are the elected representatives of the community, and theoretically, concentrate on policy and ensuring that the local government is responsive to community needs and wishes.
- The manager is hired to assist the board in determination of policy and serves at the direction of the board to carry out those policy decisions.
- The manager may be terminated if not responsive to the wishes of the board.
- The Manager Form of Vermont Town Government is more of the pyramid structure with many departments reporting to the manager.
- This, theoretically, increases accountability and efficiency in delivering government services.
- In the Manager Form of Vermont Town Government, the selectboard operates like the board of directors in a public corporation.

Question: Mr. Ebert - You have just said that the manager may be terminated if not responsive to the wishes of the board. Our charter says that the manager can be terminated without cause. How are these different?

Answer: Mr. Barlow - If a town has adopted the manager form under State statute, the manager would be terminated with cause, and if the town adopted the manager form of government through their charter, the manager can be terminated without cause.

Vermont City Government -

- A city is a city rather than a town because the local voters decided to call itself that and is not determined by population.
- There are 9 cities in Vermont and all cities must have a Charter.
- There are fewer elected and more appointed city officers. Most cities have an appointed city manager and a mayor with varying responsibilities.

Question: Ms. Green - Is the job of mayor a full time or part time job?

Answer: Mr. Barlow - Typically they are holding a full time job and being mayor is part time, mostly ceremonial, running the City Council role except in the City of Rutland where the mayor is a full time employee of the City.

- The voters are not directly involved in the budget approval process. Generally, the city governance system is more representational and less participatory than statutory town government.

Rutland City – Population 17,292

- Mayor, treasurer, and assessor elected for two year term; mayor appoints the city clerk and attorney for two year terms; no city manager.
- 11 member board of aldermen elected at large to two year terms. They adopt and amend city ordinances, and confirm appointments made by the mayor.

- The mayor can veto an action passed by the board of aldermen subject to being overridden by the council. And the mayor appoints department heads and officers, subject to confirmation by the board of aldermen. The mayor cannot veto the confirmations.
- Mayor and president of the board of aldermen comprise the board of finance who approves payment of the bills.
- City clerk (appointed) and city treasurer (elected) have the same authority as town clerks and town treasurers. Elected assessor has the same authority as town listers - positions that are becoming difficult to fill. In Bennington, we appoint a board of listers and hire an assessor.

Barre City – Population 9,291

- Clerk, treasurer and mayor elected to two year terms; manager appointed by city council; and assessor appointed by manager subject to city council approval.

Question: Mr. Carroll - Who has the final say, the mayor or the manager?

Answer: Mr. Barlow - The mayor has no authority other than being a member of the council, so the final say is with the council.

- City council is comprised of six aldermen and the mayor; council appoints the manager, the attorney, most board and committee members, fills vacancies in elected offices, adopts ordinances and determines all matters of city policy.
- The mayor is the leader of the city council but has little executive authority under the charter. However, in case of riot, insurrection, or other emergency, the mayor can deputize anyone and outranks the Chief of Police.

Question: Ms. Green - Does the mayor in Barre serve similarly to our Select Board Chair?

Answer: Mr. Barlow - Yes, but is granted more recognition as the ceremonial head of government than the Select Board Chair.

Question: Mr. Ebert - Can the charter endow more authority to the Select Board Chair?

Answer: Mr. Barlow - Yes.

- The manager is the chief administrative officer of the city appointed by the city council to an annual term and can be removed without cause. He/she appoints and removes all department heads and other officers and is responsible for carrying out city council policies.
- The city council is prohibited from giving orders to anyone that reports to the manager.
- The mayor is the “public face” of the city, whereas the manager runs the city.
- City clerk and city treasurer have the same authority as town clerk and town treasurer. Manager appoints the assessor subject to city council approval and has the same authority as town listers.

Question: Ms. Oller - Do mayors have a political party affiliation? Our charter states that the manager must be apolitical.

Answer: Mr. Barlow - I suppose the mayors could have but I don't see it. And the apolitical requirement for a manager dates back 100 years to when political favors were granted repeatedly to ensure that the professional that was being hired as manager had no political aspirations.

Mr. Hurd: Some managers within the State carry the apolitical requirement to the degree of not even signing a petition for someone to run for local office.

Mr. Barlow added that it is important to remember when comparing the variances within the position of mayor that it depends on the expectations of the community and the personality of the individual person holding the office. For example, the charters of Barre and Montpelier are very similar, but the mayor/manager relationship within each is very different.

Town of Bennington – Population 15,764

- Clerk and treasurer elected for three year terms; 7 member selectboard elected for three year terms; manager appointed by selectboard; and a 3 member board of listers appointed by the selectboard is unique to Bennington.
- Voters have authority to compel nonbinding advisory votes on warning, as well as, the authority to recall elected officers.
- Selectboard has authority to special assessment districts without a vote of the town.

Question: Ms. Green - Is a special assessment district different from a local option tax?

Answer: Mr. Barlow - Yes. For example, a special assessment district would be charging for water and sewer only to those that are using it and not to the whole town.

- Establishing the Bennington Downtown District in the charter is also unique to Bennington.

Things to Think About –

- Should Bennington have a mayor? A mayor can function as a CEO or be a ceremonial figure.
- If so, what should the role of the manager be? Do you need a manager? A manager would complement the role that the mayor takes - weaker mayor/stronger manager or vice versa.

Question: Ms. Oller - Doesn't the authority given to the mayor and manager determine whether one is stronger or weaker instead of the personalities?

Answer: Mr. Barlow - It is his opinion that the personality of the person holding the position is equally as important as what is written in the charter.

Question: Ms. Green - It would be easier to have a mayor and then change the charter to accommodate a CEO or ceremonial mayor. But, we can't do that, so how do we know whether to put language in the charter for a stronger or weaker mayor?

Answer: Mr. Barlow - By holding public forums and finding out what the voters want.

Question: Mr. Bethel - Aren't there two votes for a mayor - first, to decide if you want a mayor at all, and second, to decide what type of mayor you want?

Answer: Mr. Barlow - The mayor language is going to be set before it goes to the voters.

Mr. Bethel gave the petition that had been drafted by his attorney to Mr. Barlow to read, and Mr. Barlow noted that this petition is eliminating the town manager and indicating that the mayor would take over the current functions of the town manager.

- Should Bennington have a local option tax? Because Bennington was not one of the original “gold towns”, to establish a local option tax on sales, rooms, meals, and/or alcoholic beverages would require an amendment to the charter.

Question: Ms. Green - If we did begin a local option tax, can we earmark where that money would go?

Answer: Mr. Barlow - Yes, this could be done through your charter. Mr. Hurd added that it could be dedicated as a reserve fund for a specific purpose each year.

Charter Amendment Process –

- The Select Board appoints a Charter Review Committee to submit suggested charter changes via a final report to the Select Board. The Select Board then decides if the changes should go to the voters and can amend the changes as they see fit. The changes must go to the voters within 1 year from the submission of the Committee’s report.
- There is also a statutory process that requires that a petition be submitted for a charter amendment.
- The selectboard must hold the first of two informational hearings on the proposal. The first hearing must be held at least 30 days before the meeting at which the voters will vote to approve the amendment.
- The selectboard may revise the proposal based on the hearings and/or present any recommendations that they have that have not come from the Committee.
- Voting on a charter amendment is by Australian ballot.
- If the amendments are approved, the clerk must certify the results to the Secretary of State. Be sure to follow-up that the Secretary of State has received it.
- The amendment becomes effective upon affirmative enactment by the Legislature and follows the same process as any other law in the State of Vermont.
- Once approved by the Legislature and signed by the Governor, it becomes the law in the Town of Bennington.
- As a state statute, the Legislature is free to amend the charter proposal as it sees fit, although, most pass through without change.
- The selectboard and manager should be ready to testify and advocate for the proposal in the Statehouse. If they wish, citizens may also testify.

Question: Ms. Green - How will it be presented to the voters? By line item, chunks, etc.?

Answer: Mr. Barlow - The Select Board determines how it will be presented to the voters, and Mr. Jacobs stated that it will be by sections.

Mr. Hurd - Regardless of how it is presented to the voters, it will go up to the Legislature as a whole.

Mr. Plunkett - If a charter amendment is presented by a petition from the voters, it cannot be changed by the Select Board. Mr. Barlow agreed.

Question: Mr. Bethel - Wouldn't it be better for the Committee to work on the more important issues now for the 2018 vote, and then 6 months from now, work on the others for the 2019 vote?

Answer: Ms. Oller - The Committee was charged with looking at the whole document, so we will do that and then go back if we believe it is necessary. We are obtaining all the information and documentation on an issue before reaching a decision on it. "These are not just our opinions."

Mr. Ebert added that he does not want to be hurried, or "pushed or pulled" into prioritizing which issue is more important than another. The Charter gives us a year to review it, and if it takes that long, so be it. "The Town will still be here."

Question: Ms. Oller - Would we vote on the mayor's salary like we do the clerk's and treasurer's?

Answer: Mr. Barlow - It is typically a line item in the budget.

The Committee will be having two other public forums - one in October and one in November. When CAT-TV notifies Mr. Hurd of their availability, the dates and times of those meetings will be publicized. The Committee strongly encourages input from the public on the charter review.

The Committee will also be presenting all of their recommendations to the Select Board in one final professional report where all of their reasoning's for either changing or not changing something will be explained.

Mr. Jacobs recommended that Mr. Barlow give examples of both 'at will' and 'for cause' town manager contracts to the Committee for them to peruse, and he will do that.

Mr. Barlow's power point presentation will be on the Charter Review Committee page of the Town's website.

At 7:07 pm, Sean-Marie Oller moved and P. Lynn Green seconded the adjournment of the meeting. The motion carried unanimously.

Respectfully submitted,

Nancy H. Lively

Secretary