

**FINAL REPORT**  
**of the**  
**TOPSHAM**  
**CHARTER COMMISSION**

**August 2008**

**Topsham Charter Commission Mission Statement**

The Topsham Charter Commission aims at making a sincere effort to represent the opinions and wishes of the citizens of Topsham. We pledge to conduct a thorough and reasoned study of the issues surrounding the present town government and other forms of municipal government that might be applicable to the Town of Topsham, and present a charter for consideration by the voters of the Town.

**FINAL REPORT**  
**of the**  
**TOPSHAM CHARTER COMMISSION**  
**August 2008**

The Topsham Charter Commission hereby submits its final report to the Select Board of the Town of Topsham. In accordance with 30-A M.R.S.A. §2013(5)(D), this report includes the full text of the proposed new charter (Appendix A), a written attorney's opinion on the proposed charter (Appendix B), and the explanation and rationale for the proposed new charter set forth below.

This report is divided into three major sections. First, some brief background and process information is provided. This allows the reader to place this report in context by briefly describing Topsham's current governance structure and the Charter Commission process. Second, and moving to the core of this report, the explanation and rationale for the charter is presented. This section provides an overview of major charter elements, the reasons supporting the charter, and a summary of other notable discussion items. Lastly, a formal endorsement of the Charter by Commission members is provided.

**I. Background and Process**

The Town of Topsham was originally incorporated in 1764 as the nineteenth Town in Maine. With about 9,700 residents, it is now the largest municipality in Sagadahoc County, as measured by population. Topsham has over 7,000 registered voters. Topsham currently has the Town Meeting-Selectmen-Manager form of government, being the "town manager plan" provided by Maine law. (See 30-A M.R.S.A. §2631, et. seq.) Topsham currently does not have a charter. Administration of government is generally governed by Chapter 6 of the Topsham Town Code.

On February 1, 2007, the Selectmen voted to place a referendum question to establish a Charter Commission on the June 2007 ballot. On June 12, 2007, Topsham voters approved the establishment of the Charter Commission. Soon thereafter, in accordance with Maine law, the Selectman appointed three members (Mark Ponziani, Christopher Taylor, and Richard F. Snow), and scheduled a special election for the voters to select the remaining six members. On September 11, 2007, the remaining six Commissioners were elected (James Byrne, Edward Caron, Michael Evringham, Peter Gore, George Moore, and Bruce A. Van Note), thereby creating the nine member Commission called for by Maine law. Experience of Commission members is extensive and varied, and includes work as Selectman, town meeting moderator, budget committee member, attorney, neighborhood organizer, town employee, state legislative practitioner, town meeting participant, and of course, Topsham voter.

On September 25, 2007, in accordance with Maine law, the Charter Commission held its organizational meeting. The Commission elected Richard F. Snow as Chair,

Bruce A. Van Note as Vice-Chair, and James Byrne as Secretary. It adopted the following mission statement.

The Topsham Charter Commission aims at making a sincere effort to represent the opinions and wishes of the citizens of Topsham. We pledge to conduct a thorough and reasoned study of the issues surrounding the present town government and other forms of municipal government that might be applicable to the Town of Topsham, and present a charter for consideration by the voters of the Town.

On October 22, 2007, the Commission held a duly noticed public meeting to receive information, views, comments and other materials related to its functions.

Other opportunities for public input were numerous and the operation of the Commission was transparent. Over the past 11 months, the Commission met 21 times, generally twice a month on Monday evenings with the proceedings televised on local public access cable television. All significant deliberations took place at one of these public meetings. Public input was welcome at every meeting, and was expanded to allow input at the beginning and end of each meeting. Like many civic endeavors in Topsham, public attendance was often light. The Commission established a website with a link on the Town website. All appropriate material was available either on-line or via a hard copy file on record with the Town Clerk. A non-binding survey was sent to every household in Topsham by way of an insert in the Topsham Cryer newspaper. The survey was also placed at the Library and Town Clerk's Office. The Commission welcomed letters and e-mails. Commission members met informally with several groups in an outreach program. Such groups included the Board of Selectman, the Highlands, the Topsham Heights Neighborhood Association, the Topsham Democratic Committee, the Topsham Crossing Board, and Topsham Trailriders.

On May 22, 2008, in accordance with Maine law, the Commission provided the Selectmen with its Preliminary Report including the text of the proposed Charter, which called for a Town Council-Manager form of government. This report was circulated throughout the Town and sufficient copies were provided to the Town Clerk to permit distribution to each voter requesting a copy.

On August 18, 2008, the proposed Charter attached as Appendix A was approved by the Commission by a vote of 7-1, with one abstention. This report represents the views of the seven-member majority reached through careful deliberation, consensus and compromise. There is no minority report. Commissioner Gore, who cast the lone dissenting vote, indicated that though he supported a change to a Town Council form of government, this charter did not go far enough in such areas as transition, districts, and term limits. Commissioner Ponziani, who was not present at the final vote but had abstained previously, indicated at previous Commission meetings that he generally supported the current Town Meeting form of government.

## **II. Explanation and Rationale for the Charter**

A. Overview of Charter Provisions. As can be seen in the full text of the proposed Charter attached as Appendix A, the Charter includes has the following elements.

1. It calls for change to a Town Council-Manager form of government.
2. Generally, the powers of the Town will be vested in the Council, meaning Councilors will vote on the ultimate disposition of most matters, and thus be more accountable.
3. The Charter provides for several important checks and balances on the Council. Major financial or strategic acts of the Council must be ratified by the voters by a secret ballot referendum. Such acts include the adoption of the annual operating budget, all borrowing, establishment of Tax Increment Financing Districts, and revisions to the Comprehensive Plan.
4. Further, the Charter has initiative, referendum and recall provisions, again utilizing secret ballots.
5. The Charter calls for a seven member Council, all elected at-large, for staggered three-year terms. (There are currently five Selectman, all elected at-large.)
6. To transition to a Council, the Charter calls for Selectman who swear to uphold the new Charter to be allowed to serve out their terms, and for the election of new Councilors in June 2009 to form the first full seven-member Council.
7. The Charter allows for the use of absentee ballots, something not allowed under Topsham's current form of government.
8. The Charter establishes a code of conduct for Councilors.
9. The Charter does not include term limits.
10. The role of the Finance Committee is enhanced by including its recommendation as background information in the referendum question ratifying Council action on the annual operating budget.
11. Other town administration – the Town Manager, Departments, Boards and Commissions – stay virtually the same as they are under the current structure.

B. Reasons Supporting the Charter. The Commission had numerous reasons for supporting the Charter. They include the following.

1. All Citizens Matter: The Size of Topsham and Low Turnout at Town Meetings. In recent years, Topsham has been a very rapidly growing community both in population (up 41% in 20 years) and in commercial development in the area of the Topsham Fair Mall, strategically located adjacent to Interstate 295.<sup>1</sup> Topsham currently has a population of about 9,700 and over 7,000 registered voters, a number that is expected to increase as the November 2008 election approaches.<sup>2</sup>

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<sup>1</sup> Source: Maine.gov/local

<sup>2</sup> Source: Topsham Town Clerk

Topsham is a special community that should continue to chart its own path on issues like town governance. However, a review of other Maine municipalities is instructive.<sup>3</sup> There are about 490 municipalities in Maine, with the vast majority of them having low populations. Only about 8% of all municipalities have populations of 7,500 or more. In fact, only about 13% have populations more than 5,000 and only about one third have populations more than 2,000. To match these small populations, about half of all Maine municipalities have a Selectman-Town Meeting form of government, and another third have a Selectman-Town Meeting-Manager form like that currently used in Topsham.

Topsham, with a population of about 9,700, is 22<sup>nd</sup> largest municipality in Maine by population, meaning that only about 4% of municipalities in Maine are larger than Topsham. Larger communities overwhelmingly have opted for a Council form of government. Of the 38 municipalities with populations greater than 7,500, about 84% of them have a Council form of government. Only six of these larger municipalities, including Topsham, have retained a Selectman-Town Meeting form of government.

Despite Topsham's large population, participation in Town Meetings is low. The largest turnout at Town Meetings held in recent years was about 450 voters, meaning that even at the "largest" Town Meeting, a vote of 225 attendees, or about 3% of eligible voters, could carry any measure, including warrant amendment made for the first time at the Town meeting.

Based upon information heard by Commission members, the reasons for such low Town Meeting participation include long meetings, inconvenient times, and busy modern lifestyles. These challenges are especially acute for parents of small children, the elderly, or people with nonstandard work schedules. Reasons also included insufficient knowledge of complex issues, a sense of inevitability of results, the natural fear of public speaking, and interpersonal discomfort that can arise from public disagreement.

Moreover, even if Topsham could stimulate a larger turnout, logistical issues will remain. With more debate, meetings will go longer and seating will become a challenge. (The Orion Center seats about 900.)

Therefore, to forward the principle of equal opportunity for all, the Charter calls for a representative form of government: the Town Council. All people setting policy will be elected and accountable to all the voters, and all voters will get an equal say through Councilors and the ballot box.

2. Complexity of Issues. As any municipality grows, the complexity of the issues confronting it grows as well. Development, conservation, and quality of life issues often require complex negotiations, a stable government, and quicker

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<sup>3</sup> Source of population/governance data: Maine Municipal Association, 2007.

action to leverage available opportunities and funding. The Council form of government proposed in the Charter will allow for careful analysis of such complex issues and be more nimble, while preserving checks and balances for all voters over major expenditures and strategic actions.

3. Better Checks and Balances. Though some argue that a town meeting is the best check and balance, chronic low turnout means that this is a check for the relatively few who have the time and temperament to attend town meetings. The Commission believes that the basic pillars of progressive and popular government are all voters being heard on critical issues by secret ballot, elected and accountable Councilors, and the power of initiative, referendum, and recall. The proposed Charter provides for all these pillars, thus creating better checks and balances for Topsham voters.
  4. Accountability. The current form of government in Topsham allows Selectman to vote to place certain items on a Town Meeting Warrant with sometimes unclear recommendations, with the justification that the ultimate decision will be made at Town Meeting. This creates a lack of accountability that some found troubling, especially when considering such small town meeting turnout. The Charter will require elected and accountable Councilors to go “on the record” and vote yea or nay on the substance of all matters before the town. As noted above, voters will be asked to ratify certain important financial and strategic actions by the Council through a secret ballot referendum. In this way, the position of the Councilors on all matters will be clear, thus enhancing accountability and creating a clearer track record.
  5. Absentee Ballots. Voters clearly want the opportunity to have input in accordance with their schedule through the use of absentee ballots. The Town Clerk estimates that there will be over 3,000 absentee ballots cast in the upcoming November election. Whether the voter is elderly, has young children, works at night, wants to keep their views private, or simply desires to stay home with family, they clearly want this option. Town meetings that allow amendment from the floor – like Topsham’s – do not allow for absentee ballots. This Charter does.
- C. Other Notable Discussion Items. Though not included in the Charter, there were several other issues that were discussed at length and that deserve mention in this report.
1. Town Meeting. This report would not be complete without a more extensive discussion of Town Meeting. As noted above, Town Meeting is widely used by smaller communities statewide. Supporters often describe it as the “purest form of democracy”. During this Charter process, the Commission heard from many ardent and vocal supporters of Town Meeting. Some likened it to a Senate, some clearly loved the public verbal give-and-take, and some mentioned the “small town feel” that it brings to Topsham. Most supporters were regular Town Meeting attendees, those 5+ percent of eligible voters who have the requisite dedication, time and temperament to participate in, or even enjoy, Town Meeting.

However, the Commission was charged with representing all the citizens of Topsham, including the 95% of voters that do not attend Town meetings. With all Topsham citizens in mind, the Commission decided that the decisions of elected and accountable Councilors is generally preferable for most issues, that the secret ballot, initiative and recall provisions are better checks and balances, that more people will participate in a process that allows absentee voting, and that the small town feel created by Town Meeting does not match Topsham's larger town reality. In sum, though the Town Meeting once served Topsham well, it simply does not fit Topsham well now.

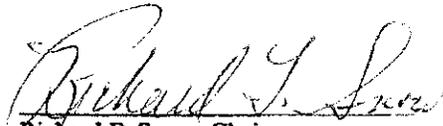
In reaching this conclusion, the Commission notes that verbal public input is preserved, and perhaps even enhanced, by the proposed Charter. Opportunities for such input will occur at smaller and less formidable Council meetings, which may encourage more participation. Further, such input will have wider distribution through local access cable television, thus allow more private, careful deliberation of a wider pool of voters before final votes are cast. In sum, this Charter provides that if citizens want to be heard, they will be, but in ways that are earlier and easier.

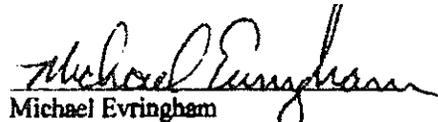
2. Term Limits. Being a "hot button" issue, the Commission discussed term limits at some length. The benefits of "new blood" and an automatic check and balance were considered. In the end, however, a clear majority of the Commission rejected term limits because being a good Councilor requires experience, people willing to sacrifice their time and effort for the Town should be allowed to serve, the recall provisions provided in the Charter provide an adequate check and balance, and the ultimate term limit already exists – it's an election.
3. Districts. The Commission carefully considered and discussed Districts given that the majority of the respondents to the non-binding survey favored them. A proposed three-district map was created and considered. Various iterations of how many district councilors and how many at-large councilors were discussed. There was substantial opposition to districts, both on the Commission and from attendees at Commission meetings. People did not want to "split the Town" and wanted all Councilors to act in the best interest of the entire Town. In the end, a clear majority of the Commission decided that the real but marginal benefits of districts were outweighed by its potential parochial and vision limiting drawbacks. The Charter calls for all seven Councilors to be elected at-large.
4. Transition. There was extensive discussion about how to transition from a Selectmen to a Council Form of government. Some on the Commission felt strongly that the responsibilities of a Councilor were different enough from those of a Selectman to require all Selectman to re-run for their seat. Sitting Selectman cited the will of the people in voting for them and the need for an orderly transition. As noted above, the powers of a Councilor will be greater. In the end, however, a clear majority of the Commission decided that the roles were similar enough, that experience of current Selectman was important enough, and that the desire of Selectmen-turned Councilors to "do good" for the Town will be strong

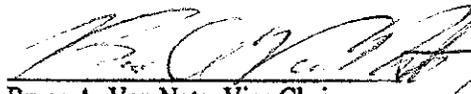
however, a clear majority of the Commission decided that the roles were similar enough, that experience of current Selectman was important enough, and that the desire of Selectmen-turned Councilors to "do good" for the Town will be strong enough to justify allowing having Selectman serve out their terms before having to seek reelection. Accordingly, the Charter calls for Selectman who swear to uphold the new Charter to be allowed serve out their elected terms, and for the election of new Councilors in June 2009 to form the first full seven-member Council.

### III. Endorsement by Commissioners

In the interests of fairness, broader participation, and good government, and for the reasons more specifically set forth above, the undersigned seven members of the Topsham Charter Commission, having achieved its mission, hereby endorse, approve and support the Charter attached as Appendix A, and urge the voters of the Town of Topsham to do the same.

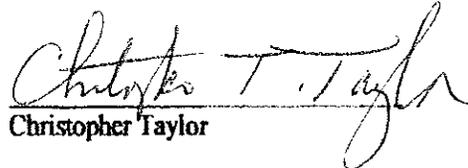
  
Richard F. Snow, Chair

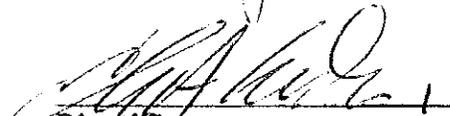
  
Michael Evringham

  
Bruce A. Van Note, Vice Chair

  
George Moore

  
James Byrne, Secretary

  
Christopher Taylor

  
Edward Caron

(Peter Gore voted "nay". Mark Ponziani abstained)

#### ATTACHMENTS

APPENDIX A—Full Text of Proposed Charter

APPENDIX B—Attorney's Opinion

APPENDIX A

Town of Topsham

Proposed Charter

Town of Topsham  
Council-Manager Charter  
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## **Chapter 1: Grant of Powers to the Town**

### **1.1 Corporate Existence**

The inhabitants of the Town of Topsham shall be a municipal corporation by the name of the Town of Topsham.

### **1.2 Powers**

The Town shall have, exercise, and enjoy all the rights, immunities, powers, and privileges of municipal corporations incorporated under the laws of the State of Maine. It shall be subject to all the duties, liabilities, and obligations provided for in this Charter, or otherwise pertaining to or incumbent upon such municipal corporations.

The Town may enact bylaws, regulations, and ordinances not inconsistent with the United States Constitution and the Constitution and laws of the State of Maine, and establish penalties for the breach thereof as provided by the laws of the State of Maine.

### **1.3 Construction**

The powers of the Town under this Charter shall be construed liberally in favor of the Town; these powers shall include all those that are necessary and convenient to conduct its municipal affairs, including all powers pursuant to the Constitution and laws of the State of Maine.

As used in this Charter the word “Council” shall refer to the Town Council.

As used in this Charter the word “Councilor” shall refer to a member of the Town Council.

As used in this Charter the word “Manager” shall refer to the Town Manager.

As used in this Charter the word “day” shall mean calendar day.

### **1.4 Charter Revisions and Amendments**

This Charter may be revised and amended as provided by state law, consistent with the U.S. Constitution, the State of Maine Constitution, and the general laws of the State of Maine.

## **Chapter 2: Town Council**

### **2.1 Composition, Eligibility, Election and Terms**

#### **2.1.1 Composition**

There shall be a Town Council of seven (7) members. Each member of the Council shall be elected by the registered voters of the Town at large.

#### **2.1.2 Eligibility**

Only qualified voters of the Town who reside in the Town shall be eligible to be nominated, to be elected, and to hold the office of Councilor. No Town employee shall be eligible to serve on the Town Council.

#### **2.1.3 Election, Terms**

Councilors shall be elected to serve staggered three (3) year terms as provided for in Chapter 8.

### **2.2 General Powers and Duties**

The Town Council shall constitute the municipal officers of the Town, and all powers of the Town shall be vested in the Town Council, except as expressly provided by this Charter. The Town Council shall provide for the exercise of all powers and for the performance and administration of all the fiscal, prudential, and municipal affairs of the Town. Except as expressly provided in this Charter, all legislative powers of the Town shall be vested in the Town Council, which shall be and constitute the legislative body of the Town as that term is used in the Laws of the State of Maine.

The Town Council shall appoint the Town Manager.

### **2.3 Compensation**

Except as provided in Chapter 8, the Council may determine the annual salary of Councilors by ordinance, but no such ordinance increasing the salary of members of the Town Council shall take effect during the then current fiscal year.

### **2.4 Chair and Vice-Chair**

#### **2.4.1 Elections and Terms**

At the first meeting of the Town Council held after each Annual Municipal Election (see Chapter 6), or as soon as thereafter practical, it shall elect, by a majority vote of the entire Council, one of its members as Chair and one of its

members as Vice-Chair for the ensuing year, and the Council shall fill, for an unexpired term, any vacancy in the office of Chair or Vice-Chair that may occur. The Chair shall be recognized as the head of town government for all ceremonial purposes and by the Governor for purposes of military law, but the Chair shall have no regular administrative duties. In the temporary absence or disability of the Chair, the Vice-Chair shall exercise all the powers of the Chair during such temporary absence or disability. It shall be the duty of the Chair to (1) preside at all meetings of the Council; (2) develop, after consultation with the Town Manager, agenda for Council meetings, provided that no Councilor shall be denied the right to place an item on the agenda; (3) after consultation with the Council, represent the Council in all dealings with the Town Manager and with all statutory and advisory boards, commissions, and committees in person or by delegation.

#### **2.4.2 Removal**

The Council may remove the Chair or Vice Chair from the position of Chair or Vice-Chair by a vote of five (5) Councilors, after public notice, notice in writing to the Chair or Vice Chair, and a public hearing. The Chair or Vice Chair may elect to waive the requirements for public notice and/or a public hearing.

### **2.5 Vacancies, Forfeiture of Office, Filling of Vacancies**

#### **2.5.1 Vacancies**

The office of Councilor shall become vacant upon a Councilor's nonacceptance, death, resignation, failure to qualify for the office within ten (10) days after written demand of the Council, forfeiture of office, removal from office in any manner authorized by law, or failure of the Town to elect a person to the office, all as determined by the Council.

#### **2.5.2 Forfeiture of Office**

A Councilor shall forfeit the office if the Councilor (1) is convicted of a crime punishable by imprisonment for greater than or equal to six (6) months or (2) fails to attend three (3) consecutive regular meetings of the Council without being excused by the Council. Persons who forfeit the office of Councilor shall not be eligible to hold that office for five (5) years following such forfeiture.

#### **2.5.3 Filling of Vacancies**

If a seat on the Town Council becomes vacant more than six (6) months prior to the next Annual Municipal Election, the vacancy shall be filled for the unexpired term by a special election held within sixty (60) days from the date the vacancy occurred. If a seat on the Town Council becomes vacant within six (6) months

prior to the next Annual Municipal Election, the Council shall appoint a qualified person to fill the vacancy.

## **2.6 Code of Conduct**

Each member of the Town Council shall be required to adhere to the following Code of Conduct during all Council meetings and at all other times while representing the Town:

- 2.6.1 A Town Councilor shall treat and address other Councilors, town employees, and fellow citizens with respect.
- 2.6.2 A Town Councilor shall not make unfounded accusatory or disparaging remarks towards other Councilors, town employees, or fellow citizens.
- 2.6.3 A Town Councilor shall not knowingly, intentionally, and in bad faith make false statements or perpetrate fraud.
- 2.6.4 A Town Councilor shall conduct his or her relationships with town employees, fellow citizens, town business contacts (existing and potential), and media communications in line with the fact that he or she has no legal authority outside the Town Council.
- 2.6.5 A Town Councilor shall not knowingly, intentionally, and in bad faith compromise the confidentiality of Town confidential matters.
- 2.6.6 A Town Councilor shall not knowingly, intentionally, and in bad faith act in a manner which improperly discriminates against any individual as prohibited in the Maine Human Rights Act.
- 2.6.7 A Town Councilor shall not solicit or accept any valuable consideration from any person as an inducement to confer a special advantage upon that person in his or her dealing with the Town.

## **2.7 Proceedings of the Council**

### **2.7.1 Meetings**

The Council shall meet regularly at least once each month at such times and places as the Council may prescribe. The Council shall provide public notification of its meetings and all meetings shall be open to the public except as allowed by state law. Special meetings may be held on the call of the Chair or four or more members of the Council by causing notification to be given in hand or left at the usual dwelling place of each Councilor. If practical, such notice shall be given not less than twelve (12) hours before the special meeting and shall be published in a newspaper or newspapers having general circulation in the Town.

### **2.7.2 Rules, Agendas, Minutes**

The Council shall determine its own rules of procedure and order of business. The Council shall create meeting agendas for each meeting and shall make these agendas available for public inspection prior to each regular meeting. The Council shall keep minutes of its meetings recording all business of the Council and these minutes shall be open for public inspection.

### **2.7.3 Voting, Abstention**

Voting shall be by show of hands except that a vote recording the yeas and nays of the Councilors shall be taken for final passage of any ordinance or upon the request of any Councilor. A majority of the members of the Council shall constitute a quorum and no vote shall be taken in the absence of a quorum except to adjourn. No action of the Council shall be binding or valid unless adopted by four (4) or more affirmative votes.

Unless a bona fide conflict of interest (see Section 2.11) is declared, each Councilor shall declare his or her vote either for or against the motion. Any unfounded abstention shall be recorded as a vote for the motion.

## **2.8 Ordinances**

### **2.8.1 Action Requiring an Ordinance**

In addition to acts required by law or by specific provision of this Charter to be done by ordinance, acts of the Council shall be by ordinance which (1) adopt or amend an administrative code, or establish or abolish any Town department, office, or agency; (2) provide for a fine or penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed; (3) regulate the rate at which a business or establishment may charge for its services (for example: cable television services); (4) convey or lease property of the Town except tax acquired property; or (5) amend or repeal any ordinance previously adopted. Acts other than those referred to in this section may be accomplished by ordinance, order, or resolve.

### **2.8.2 Procedure**

Except as otherwise provided in this Charter, every proposed ordinance shall be introduced in writing, shall be read by title, and shall be initially passed prior to further consideration. If the proposed ordinance is initially passed, with or without amendment, the proposed ordinance shall be the subject of a Public Hearing, such hearing to be held within a meeting of the Town Council. Notice of the time, date, and place of the hearing shall be published at least once in a newspaper having general circulation in the Town not less than seven (7) days before the date of the hearing. The full text of the proposed ordinance shall be available to the public in

the Town Clerk's office and electronically on the Town's website not less than seven (7) days before the date of the hearing.

At the Public Hearing the text of the proposed ordinance shall be read in full unless waived by an affirmative vote of two-thirds of the Council. After the Public Hearing, and at the meeting then in session or at a later date, the Council may finally pass such ordinance, with or without amendment.

Every ordinance shall become effective on the twenty-first (21<sup>st</sup>) day after its final passage except as otherwise provided in this Charter.

### **2.8.3 Emergency Ordinances**

Except for an ordinance that would levy taxes or authorize the borrowing of money, the Town Council may adopt an emergency ordinance to meet a public emergency affecting life, health, property, or the public peace. An Emergency Ordinance shall be plainly designated as such and shall contain a statement that an emergency exists and describing it in clear and specific terms. An Emergency Ordinance may be adopted at the meeting at which it is introduced, with or without amendment, by an affirmative vote of not less than six (6) Councilors. Emergency Ordinances shall become effective at the time of adoption or at such later time as the Council may specify. An Emergency Ordinance may be repealed by the adoption of a repealing ordinance in the same manner as the Emergency Ordinance was originally adopted. Every Emergency Ordinance shall stand repealed as of the sixtieth (60<sup>th</sup>) day following the date on which it was adopted but this shall not prevent reenactment of the ordinance in the manner specified in this section, if the emergency still exists.

### **2.8.4 Ordinances Requiring Ratification by Secret Ballot Election**

Actions by the Council meeting the following criteria shall be done by ordinance and shall require ratification by a majority of voters casting ballots at a Secret Ballot Election prior to becoming effective;

- a. Acts adopting an annual operating budget. The form of the ballot question(s) and background information shall be substantially as follows. *(Text in italics is instructional for town officials, and is not to appear on the ballot.)*

Budget Question(s) - Background Information *(To be provided on the ballot before the budget questions(s).)*

1. The Town Council adopted the following budget by a vote of \_\_\_ to \_\_\_.
2. The Finance Committee by a vote of \_\_\_ to \_\_\_ recommends a "YES / NO" vote.

3. *(To be provided only if the budget exceeds the property tax levy limit contained in state law.)* To approve this budget, you must vote YES on both of the following two questions.

Shall the annual operating budget for the Town of Topsham for the period from July 1, 20 \_\_ to June 30, 20 \_\_ in the amount of \$ \_\_\_\_ be approved?

\_\_\_\_ YES      \_\_\_\_ NO

*If the budget exceeds the property tax levy limit contained in state law (30-A MRSA §5721-A), the following question shall immediately follow.*

The annual operating budget provided in the preceding question exceeds the property tax levy limit provided in state law. Do you approve of exceeding said state property tax levy limit?

\_\_\_\_ YES      \_\_\_\_ NO

- b. Acts authorizing the borrowing of any funds or issuing of notes/bonds except for borrowing in anticipation of the receipt of taxes where such borrowings will be repaid within the current fiscal year.
- c. Acts authorizing the establishment of Tax Increment Financing Districts in the Town or approving requisite Credit Enhancement Agreements.
- d. Acts that approve revisions to the existing approved Comprehensive Plan.

## **2.9 Investigations and Subpoena Power**

The Council may make investigations into the affairs of the Town and the conduct of any Town department, office, or agency and for this purpose may establish by ordinance a hearing procedure that includes the issuance of subpoenas to compel the attendance of witnesses and the production of evidence, the administering of oaths, the taking of testimony, and other procedures.

## **2.10 Prohibitions**

### **2.10.1 Holding other Office**

No Councilor shall hold any other Town office or Town employment during the term for which he or she was elected.

### **2.10.2 Confirmations, Appointments, and Removals**

### **2.10.2 Confirmations, Appointments, and Removals**

The Town Manager's appointments of the following administrative offices shall be subject to confirmation by the Council: Town Clerk, Police Chief, Fire Chief, Public Works Director, Solid Waste Director, Finance Director, Tax Assessor, Codes Enforcement Officer, Town Treasurer, Town Tax Collector, Planning Director, Community Services Director, General Assistance Coordinator and Town Attorney.

Except as provided with this Charter, neither the Town Council nor any of its members shall in any manner dictate the appointment or removal of any Town administrative officers or employees within the jurisdiction of the Town Manager or his or her subordinates, but the Council may express its views and fully and freely discuss with the Town Manager anything pertaining to appointment and removal of such officers and employees.

### **2.10.3 Interference with Administration**

Except for the purpose of inquiries and investigations under Section 2.9, the Council or its members shall deal with the Town officers and employees who are subject to the direction and supervision of the Town Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

## **2.11 Conflict of Interest**

If a Town Councilor or an immediate family member of a Town Councilor has a substantial financial interest, direct or indirect, in any contract with the Town or in the purchase or sale of any land, material, supplies, or service to the Town or to a contractor supplying the Town, the Councilor shall make known that interest and shall not vote or otherwise participate as a Town Councilor in making any such purchase or sale or contract.

If a Town Councilor, acting in good faith, believes that his or her participation in any potential action of the Town Council would be or would give the appearance of being a conflict of interest then the Councilor shall make known that interest and shall not vote or otherwise participate as a Town Councilor in that action.

## **2.12 Recall of a Town Councilor**

2.12.1 The Town Council may initiate a recall election of a Town Councilor for just cause by passing a resolution with 5 affirmative votes stating the reason(s) for recall. Upon passage of any such resolution the Town Council shall, within forty-five (45) days, hold a recall election as described in Section 7.3 – Power of Recall.

shall be considered just causes for initiating a recall determination of a Town Councilor.

## **Chapter 3: Town Manager**

### **3.1 Appointment, Qualifications, Compensation**

The Town Council shall appoint a Town Manager for an indefinite term or a definite term by contract and shall fix his or her compensation. The Town Manager shall be appointed solely on the basis of character and executive and administrative qualifications with special reference to actual experience in or knowledge of the duties of the office as described in this Charter.

### **3.2 Powers and Duties**

- 3.2.1 The Town Manager shall be the chief administrative officer of the Town and the head of the administrative branch of the town government, The Town Manager shall be responsible to the Town Council for the proper administration of all affairs of the Town.
- 3.2.2 Subject to the confirmation provisions by the Town Council as described in Section 2.10.2, the Town Manager shall appoint, prescribe the duties of, supervise and, when necessary for the good of the Town, suspend or remove all town employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, by this Charter, or by personnel rules adopted pursuant to this Charter. The Town Manager may delegate, by specific authorization in writing, any administrative officer who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency.
- 3.2.3 The Town Manager shall direct and supervise the administration of all departments, offices, and agencies of the Town except as otherwise provided by this Charter or by law.
- 3.2.4 The Town Manager shall attend all meetings of the Town Council except when his or her attendance is excused by the Council, and except when his or her removal is being considered, and shall have the right to take part in discussion but may not vote.
- 3.2.5 The Town Manager shall be responsible for ensuring that all laws, provisions of this Charter, and acts of the Town Council that are subject to enforcement by the Town Manager or by officers subject to direction and supervision of the Town Manager, are faithfully enforced.
- 3.2.6 The Town Manager shall prepare and submit the annual budget and other related financial and administrative reports to the Town Council and shall be responsible for the administration of the annual budget after adoption.

- 3.2.7 The Town Manager shall act as purchasing agent for all departments of the Town of Topsham.
- 3.2.8 The Town Manager shall prepare and submit to the Town Council such reports and shall perform such duties as the Town Council may require and shall make such recommendations to the Town Council concerning the affairs of the Town as he or she deems desirable and appropriate or as the Town Council may request.

### **3.3 Removal**

- 3.3.1 The Town Council may remove the Town Manager from office in accordance with the following procedure:
  - a. The Town Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which shall state the reasons for removal and may suspend the Town Manager from duty for a period not to exceed 30 days. A copy of the resolution shall be delivered to the Town Manager within five (5) days of the vote.
  - b. Within five (5) days after the delivery of a copy of the resolution, the Town Manager may file with the Town Council a written request for a public hearing. Upon receipt of such a request the Town Council shall hold a public hearing on the proposed removal at a Town Council meeting held no earlier than ten (10) nor later than twenty (20) days after the request is filed. The Town Manger may file a written reply to the resolution not later than five (5) days before the public hearing.
  - c. At any time after the public hearing required as above or at any time after ten (10) days from the date when a copy of the preliminary resolution was delivered to the Town Manager if the Town Manager has not requested a public hearing, the Town Council may, by affirmative vote of a majority of all of its members, adopt a final resolution of removal which may be made effective immediately.
- 3.3.2 The Town Manager shall continue to receive his or her salary until the effective date of a final resolution of removal.

### **3.4 Absence, Vacancy**

- 3.4.1 In any case involving the Town Manager's absence or disability for a period which is reasonably expected to be twenty-one (21) days or less, the Town Manager shall designate in writing a qualified administrative officer of the Town to exercise the powers and perform the duties of the Town Manager during such absence or disability and shall file said designation with the Town Council. During such absence or disability the Town Council may revoke such designation at any time and appoint another qualified person other than a member of the Town

Council to serve until the Town Manager returns or his or her disability ceases. If the Town Manager fails to make a designation as required above the Town Council may appoint a qualified person other than a member of the Town Council to serve until the Town Manager returns or his or her disability ceases.

- 3.4.2 In any case in which the absence or disability of the Town Manager is reasonably expected to exceed twenty-one (21) days, or in the event the office of Town Manager becomes vacant by death, resignation, removal, or otherwise, the appointment of a designate shall be made by the Town Council as soon as practicable.

## **Chapter 4: Town Administration**

### **4.1 Town Departments**

#### **4.1.1 General**

The Town Council may, by ordinance, establish Town departments, offices, boards, or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices, boards, and agencies, except that no function assigned by this Charter to a particular department, office, board, or agency may be discontinued or assigned to any other.

All departments, offices, and agencies under the direction and supervision of the Town Manager shall be administered by an official appointed by and subject to the direction and supervision of the Town Manager. With the consent of the Town Council, the Town Manager may serve as the head of one or more of such departments, offices, or agencies or may appoint one person as the head of two or more of them.

#### **4.1.2 Town Clerk**

There shall be a Town Clerk appointed by the Town Manager who is confirmed by the Town Council pursuant to Section 2.10.2. The Town Clerk shall perform all duties and responsibilities provided for municipal clerks under state law, under this Charter, and other such duties as the Town Council may require.

#### **4.1.3 Tax Assessor**

There shall be a single Tax Assessor appointed by the Town Manager who is confirmed by the Town Council pursuant to Section 2.10.2. The Tax Assessor shall have custody of and maintain the assessment records of the Town and shall perform all duties and responsibilities as are prescribed for assessors by the laws of the State of Maine. The Tax Assessor must be certified by the State of Maine.

### **4.2 Ad-hoc Committees**

The Town Council is authorized to establish Ad-hoc committees that are temporary and have specific purpose. The number of members, term, powers, and duties of an ad-hoc committee shall be as determined by the Town Council. Ad-hoc committees shall not be established to undermine the powers and duties of Standing Committees.

### **4.3 Standing Boards and Committees**

#### **4.3.1 Standing Committees**

The following shall be the Standing Committees of the Town of Topsham:

Planning Board  
Board of Appeals  
Finance Committee  
Board of Assessment Review  
Historic District Commission  
Conservation Commission

The Finance Committee shall consist of nine (9) members. The Board of Assessment Review shall consist of three (3) members and two (2) alternate members. The number of members of all other standing committees shall be as established in town ordinance.

#### **4.3.2 Quorum and Vacancies**

No meeting of a Standing Committee shall be held without a quorum consisting of a majority of its members.

Any vacancy in a position shall not impair the jurisdiction of the Board, Committee, or Commission to act, however, the vacancy shall count as a member position for purposes of determining a quorum.

#### **4.3.3 Voting**

Any action of a Standing Committee shall require the affirmative vote of a majority of its membership present and voting.

#### **4.3.4 Term**

Appointments to Standing Committees shall be for a term of 3 years unless established otherwise in town ordinance.

All Standing Committee appointments shall commence and terminate consistent with the Town's fiscal year.

#### **4.3.5 Standing Committee Vacancies**

A Standing Committee vacancy shall exist upon resignation of a Standing Committee member, upon a Standing Committee member inability to serve, or upon an unapproved absence of three (3) or more consecutive meetings.

The Town Council shall appoint a new member to complete any unexpired term of a vacant Standing Committee membership.

#### **4.3.6 Standing Committee Appointments and Prohibited Appointments**

Appointments of members to Standing Committees shall be made by the Town Council.

The following persons shall not be appointed to Standing Committees:

- Town Councilors
- Town Employees, full-time and part-time regular except Fire Department on-call employees.
- Spouses and domestic partners of Town Councilors and employees as described above.

#### **4.3.7 Standing Committees Purpose, Powers, and Duties**

- a. Planning Board, Board of Appeals, Board of Assessment Review, Historic District Commission, Conservation Commission

The purpose, powers, and duties of the Planning Board, Board of Appeals, Board of Assessment Review, Historic District Commission, and Conservation Commission shall be as established in town administrative ordinances and as established by state law.

- b. Finance Committee

Purpose: The purpose of the Finance Committee shall be to provide counsel and advice to the Town Council on matters regarding appropriation and expenditure of town funds.

Powers and Duties:

1. Upon receipt of a proposed annual budget from the Town Manager the Finance Committee shall immediately act to consider the budget, shall attend the budget public hearing required by this Charter, and shall provide its recommendations to the Town Council as required by this Charter.
2. After adoption of an annual operating budget by the Town Council the Finance Committee shall make its recommendation on voter ratification. This recommendation shall be made available to voters as described in Section 2.8.4 of this charter.
3. Upon the request of the Town Council to consider a Supplemental Appropriation, the Finance Committee shall immediately consider the request and shall provide its recommendations to the Town Council as soon as possible and within thirty (30) days.

4. Upon the request of the Town Council to provide concurrence with a Council proposed Emergency Appropriation, the Finance Committee shall act to immediately consider such appropriation and shall provide its recommendations to the Town Council as soon as possible.

## **Chapter 5: Financial Provisions**

### **5.1 Fiscal Year**

The fiscal year of the Town shall begin on the first day of July and end on the last day of June.

### **5.2 Submission of Town Budget**

#### **5.2.1 Budget Message**

On or before the first day of February each year, the Town Manager shall submit to the Town Council and the Finance Committee line item budgets for the ensuing fiscal year. This submission shall include a budget message explaining the budget both in fiscal terms and in terms of services provided. The budget message shall outline the proposed financial policies for the Town for the ensuing fiscal year, describe the important features of the respective budgets, indicate any significant changes in revenues and expenditures from the current fiscal year, summarize the debt and surplus positions of the Town, and include any such other information as the Town Manager believes desirable.

#### **5.2.2 Budget Format**

The budget format shall be in such form as the Town Manager deems advisable or that the Town Council may require. In organizing the budget the Town Manager shall begin with a clear general summary of its contents; shall show in detail all estimated revenues, all estimated expenditures including debt service, and shall indicate the estimated property tax levy. The budget submittal shall be arranged to show budgeted, actual to date, and estimated revenues and expenditures for the current fiscal year and actual revenues and expenditures for the preceding fiscal year.

The budget submittal shall include a Capital Improvements Plan component containing at least the following information;

- A list of all capital improvements proposed to be undertaken during the next ensuing five (5) fiscal years,
- Cost estimate for each proposed capital improvement,
- Proposed method of financing for each capital improvement,
- Estimated amount of appropriated but unspent balances for each identified capital improvement,
- Estimated amount of appropriated but unspent balances for previous completed or abandoned capital projects with recommendations for reallocation of any such balances,
- Recommendations as to which capital improvement project balances shall be carried over to the ensuing fiscal year and which should be lapsed to surplus.

### **5.3 Budget Public Hearing**

Upon receipt of the budget submittal from the Town Manager the Town Council shall immediately act to consider the budget submittal. The Town Council shall initially pass an annual budget ordinance for the ensuing fiscal year and shall present this budget ordinance to Public Hearing as required by Section 2.8.2 of this Charter on or before the first day of March each year.

### **5.4 Input From the Finance Committee**

Within thirty (30) days after the public hearing on the budget the Finance Committee shall present its recommendations on the proposed budget to the Town Council at a public meeting of the Council.

### **5.5 Adoption by the Council and Ratification by the Voters**

Following the public hearing and receipt of the recommendations of the Finance Committee, the Town Council may adopt the proposed budget with or without amendment. The Council may amend any portion of the budget by increasing appropriations or by deleting or decreasing any appropriations, except expenditures required by law or for debt service, provided that no amendment to the budget shall increase the authorized appropriations to an amount greater than estimated revenues.

The Council shall adopt a budget for the ensuing fiscal year on or before the first day of May each year and shall present this budget as a whole to the voters of the Town for ratification as a whole as required under Section 2.8.4 of this Charter. If the budget adopted by the Council is not ratified by June 30<sup>th</sup> of the present fiscal year, the budget for the previous fiscal year shall be deemed to be adopted on a month to month basis with all line items prorated accordingly and any funds required to meet existing debt service obligations adopted, until such time as the Council adopts a budget and has that budget ratified as required in this Section 5.5 and under Section 2.8.4 of this Charter.

### **5.6 Amendments after Adoption**

#### **5.6.1 Supplemental Appropriations**

If during the fiscal year, the Town Manager certifies that unanticipated revenues are available for appropriation in excess of those estimated in the budget, the Council, after receiving recommendation from the Finance Committee, may by ordinance make supplemental appropriations for the fiscal year up to the amount of such excess. The Town Council may waive the requirement to receive Finance Committee recommendation prior to making the supplemental appropriation if the Finance Committee has not responded to a Town Council request for recommendation within thirty (30) days.

### **5.6.2 Emergency Appropriations**

To meet a public emergency affecting life, health, property, or the public peace, the Town Council with the concurrence of the Finance Committee may take emergency action to appropriate the necessary funds. To the extent that there are no unappropriated revenues available to meet such an emergency, the Council may authorize the issuance of temporary notes, which may be renewed from time to time but which must be paid not later than the last day of the fiscal year following that in which the emergency appropriation was made. The Town Council may waive the requirement to receive Finance Committee concurrence prior to making the emergency appropriation if the Finance Committee has not responded to a Town Council request for concurrence within seven (7) days.

### **5.6.3 Reduction of Appropriations**

If at any time during the fiscal year it appears probable to the Town Manager that available revenues in the Town budget will be insufficient to fund the amount budgeted in a particular account, he or she shall report to the Town Council without delay, indicating the amount of the anticipated deficit in that account, any remedial action which he or she has taken, and his or her recommendations regarding any further steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize the effect of any deficit and, for that purpose, may reduce the sums appropriated in a particular budget accounts to the extent of any unencumbered balance, except that no appropriation for debt service shall be reduced and no other appropriation shall be reduced below the level required by law.

### **5.6.4 Transfer of Line Item Appropriations**

Upon written request from the Town Manager the Council may, after public hearing, transfer part or all of any line item balance within an appropriation account, except debt service, to another line item within the same or any other appropriation account of the Town budget.

### **5.7 Lapse of Appropriation**

Every general fund appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered, except that an appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned.

### **5.8 Audit**

The Town Council shall annually provide for an audit of the municipal finances for the preceding year by a reputable accounting firm.

**5.9 Borrowing in Anticipation of Taxes**

In anticipation of the collection of taxes, the Council may by resolution authorize borrowing by the issuance of notes, which notes may be renewed, but all such notes, or renewals thereof, shall mature and be paid no later than the end of the fiscal year in which the borrowing occurred.

## **Chapter 6: Elections**

### **6.1 Scheduled Elections**

- 6.1.1 An Annual Municipal Election for the purpose of electing Town Councilors and voting on any necessary voter initiatives or referendum questions shall be scheduled in November of each year so as to be coincident with other federal or state elections that may be required. The Town Council shall be responsible for annually setting the date for this election.
- 6.1.2 A Supplemental Municipal Election for the purpose of meeting annual budget ratification requirements of this Charter and for voting on any necessary voter initiatives or referendum questions shall be scheduled in May or June of each year so as to be coincident with other federal, state, or local school district elections that may be scheduled in May or June of any particular year. The Town Council shall be responsible for annually setting the date for this election.

### **6.2 General Election Provisions**

- 6.2.1 The election of Town Councilors shall be conducted on a nonpartisan basis and without party designation on petitions and ballots.
- 6.2.2 Except as otherwise provided by this Charter, the provisions of the laws of the State of Maine shall govern the qualifications of voters, the registration of voters, the manner of voting, absentee ballots, the duties of election officers, and all other matters relating to the preparation for, conduct and management of elections.

### **6.3 Nomination by Petition**

- 6.3.1 Candidates for Town Council shall be nominated by petition.
- 6.3.2 Any qualified voter of the Town may be nominated for election as a Council member at large by not less than 25 and not more than 75 qualified voters of the Town by signing a nominating petition.
- 6.3.3 Nomination petitions shall be filed on forms provided by the Town Clerk.
- 6.3.4 No nomination petitions shall be issued by the Town Clerk more than thirty (30) days prior to the earliest date upon which a completed petition could legally be accepted by the Town Clerk.
- 6.3.5 The signatures on a nominating petition need not all be affixed to the same paper, but an affidavit which has been executed by the circulator shall be attached to each separate sheet of the petition. The circulator shall state in the affidavit the number of signatures on the paper, that the signature was affixed in the circulator's presence, and that the circulator believes it to be the genuine signature

of the person whose name it purports to be. The petitioners shall sign their names in ink. Each signer shall indicate his or her street address next to his or her signature. The name and address of the signers and of the candidates do not have to be identical in form to the voting registration list as long as their identity can be clearly determined from the information provided. There is no limit on the number of petitions which may be signed by any one voter.

#### **6.4 Filing and Acceptance**

All separate papers comprising a nominating petition shall be assembled and filed with the Town Clerk as a single document not earlier than sixty (60) nor later than forty-five (45) days before the scheduled date of election. If the 45<sup>th</sup> day falls on a Saturday, Sunday, or a day recognized by the State of Maine as a legal holiday, the final filing date shall be the next regular business day. The Town Clerk shall note the time and date when each nominating petition is filed. No petition shall be accepted unless accompanied by a signed acceptance of the nomination by the candidate.

#### **6.5 Certificate of Sufficiency**

Within five (5) business days after filing of a nominating petition, the Town Clerk shall notify the candidate and the petition circulator whether or not the petition satisfies the requirements of this chapter. If a petition is found to be insufficient, the Clerk shall immediately return it to the person who filed it together with a statement as to why it is insufficient. Within the regular time for filing petitions such a petition may be amended and filed again.

#### **6.6 Ballots**

- 6.6.1 The full names of all candidates for Town Council member, except any who has died, withdrawn, or become ineligible, shall be printed on the ballot without party designation and in alphabetical order by last name under the heading "For Council Member at Large." The name of any candidate as it appears on the ballot need not be identical with the list of registered voters as long as the identity of the candidate can clearly be determined.
- 6.6.2 An ordinance which is to be voted on in accordance with Chapter 7 shall be presented on the ballot by title only. The ballot title of an ordinance may differ from its legal title and shall be a clear and concise statement regarding the substance of the measure without argument or slanting. Below the ballot title shall appear the following question: "Shall the ordinance described above be adopted?" Immediately below such question shall appear in the following order the words "yes" and "no" and to the left of each, a square in which the voter may indicate his or her vote.

#### **6.8 Voting Machines**

The Town Council may provide for the use of mechanical or other devices for voting or counting votes in a manner not inconsistent with state law, notwithstanding the provisions of this Charter regarding the form and content of paper ballots.

**6.9 Determination of Election Results**

Elections shall be determined by plurality vote. In case of a tie, a run-off election shall be held between the candidates having an equal number of votes. The run-off election shall be held no later than forty five (45) days after the tie is officially declared.

## **Chapter 7: Initiative and Referendum and Recall**

### **7.1 Power of Initiative**

#### **7.1.1 Grant of Power**

The voters of the Town of Topsham shall have the power to propose an ordinance except ordinances that would be in conflict with this Charter, state law, or federal law. Further, the voters of the Town of Topsham shall have the power to adopt or reject the same at the polls, such power being known as the Initiative.

#### **7.1.2 Initiation**

The Initiative process shall be initiated through submission, to the Town Clerk, of a proposed ordinance (the "Initiative Ordinance") by petition signed within a single thirty (30) day period by a number of qualified voters of the Town equal to or greater than ten (10) percent of the total number of qualified voters who cast votes for Governor in the most recent gubernatorial election.

#### **7.1.3 Form of Petition / Affidavit of Circulator**

All signatures shall be obtained on a petition form provided by the Town Clerk. The Initiative Ordinance shall be described on the petition form. Each person signing the petition shall include, in addition to his or her voter signature, the date signed, the printed name of the person signing, and the street address of the person signing. All petition forms shall be assembled as one document for filing. Each petition form shall include an affidavit of the circulator thereof stating that the circulator personally circulated the form, the number of signatures on the form, that each signature was obtained in the presence of the circulator, that the circulator believes each signature to be the genuine signature of the person whose name it purports to be, and that each signer had the opportunity before signing to read the text of the Initiative Ordinance.

#### **7.1.4 Sufficiency Determination**

Within seven (7) days after receipt of an Initiative petition the Town Clerk shall complete a determination as to its sufficiency and shall prepare a certificate and file with the Town Council and the petitioner as to the sufficiency of the petition, specifying, if it is insufficient, why it is defective.

If a petition has been certified as being insufficient, the petitioner may, within two (2) days after receiving the certificate, file a request that the petition sufficiency be reviewed by the Town Council. The Town Council shall review the certificate at its next meeting following the filing of such request and shall make a final determination as to the sufficiency of the petition. If no such request is received,

the sufficiency determination of the petition shall be considered final on the seventh (7<sup>th</sup>) day after the certificate is received by the Town Council.

#### **7.1.5 Initiative Action by the Town Council**

Upon certification of sufficiency of an Initiative petition the Town Council shall proceed at once to consider the petition. The Town Council shall take final action on the Initiative Ordinance not later than sixty (60) days after the date on which such petition was certified to the Town Council.

Passage of the Initiative Ordinance by the Town Council in substantially the form set forth in the certified petition shall put an end to all proceedings under the initiated and certified petition.

#### **7.1.6 Initiative Election**

If the Initiative Ordinance is not passed by the Town Council in substantially the same form set forth in the certified petition and within sixty (60) days after the date on which such ordinance was certified to the Town Council, then the Initiative Ordinance shall be submitted to the voters for determination at the next Annual or Supplemental Municipal Election.

If a majority of the qualified voters voting on the Initiative Ordinance shall vote in favor of the ordinance, such ordinance shall take effect five (5) days after the election results are declared by the Town Clerk.

#### **7.1.7 Repeal of Ordinances Enacted through Initiative**

No ordinance proposed by petition and adopted either by the Town Council or by vote of the people shall be repealed or substantially amended except by vote of the people unless expressly allowed by such ordinance.

### **7.2 Power of Referendum**

#### **7.2.1 Grant of Power**

The voters of the Town of Topsham shall have the power to approve or reject at the polls an ordinance passed by the Town Council or through the Initiative process, such power being known as the Referendum.

#### **7.2.2 Initiation**

The Referendum process shall be initiated through submission, to the Town Clerk, of a proposal to repeal an existing or pending ordinance (the "Referendum Question") by petition signed within a single thirty (30) day period by a number of qualified voters of the Town equal to or greater than ten (10) percent of the

total number of qualified voters who cast votes for Governor in the most recent gubernatorial election.

If such a referendum petition is received and certified as sufficient within twenty (20) days after final approval of a new ordinance by the Town Council then any such ordinance shall not take effect pending the outcome of the initiated referendum election.

Ordinances enacted through the Initiative process shall be subject to the Referendum process in the same manner as other ordinances.

### **7.2.3 Form of Petition / Affidavit of Circulator**

All signatures shall be obtained on a petition form provided by the Town Clerk. The existing or pending ordinance proposed to be repealed shall be described on the petition form. Each person signing the petition shall include, in addition to his or her voter signature, the date signed, the printed name of the person signing, and the street address of the person signing. All petition forms shall be assembled as one document for filing. Each petition form shall include an affidavit of the circulator thereof stating that the circulator personally circulated the form, the number of signatures on the form, that each signature was obtained in the presence of the circulator, that the circulator believes each signature to be the genuine signature of the person whose name it purports to be, and that each signer had the opportunity before signing to read the text of the ordinance proposed to be repealed.

### **7.2.4 Sufficiency Determination**

Within seven (7) days after receipt of an Referendum petition the Town Clerk shall complete a determination as to its sufficiency and shall prepare a certificate and file with the Town Council and the petitioner as to the sufficiency of the petition, specifying, if it is insufficient, why it is defective.

If a petition has been certified as being insufficient, the petitioner may, within two (2) days after receiving the certificate, file a request that the petition sufficiency be reviewed by the Town Council. The Town Council shall review the certificate at its next meeting following the filing of such request and shall make a final determination as to the sufficiency of the petition. If no such request is received, the sufficiency determination of the petition shall be considered final on the seventh (7<sup>th</sup>) day after the certificate is received by the Town Council.

### **7.2.5 Referendum Action by the Town Council**

Upon certification of sufficiency of a Referendum petition the Town Council shall proceed at once to consider the petition. The Town Council shall take final action

on the Referendum Question not later than sixty (60) days after the date on which such petition was certified to the Town Council.

Repeal of the Ordinance described in the Referendum petition by the Town Council shall put an end to all proceedings under the initiated and certified petition.

### **7.2.6 Referendum Election**

If the ordinance under consideration by the Referendum Question is not repealed by the Town Council and within sixty (60) days after the date on which the Referendum petition was certified to the Town Council, then the Referendum Question shall be submitted to the voters for repeal determination at the next Annual or Supplemental Municipal Election.

If a majority of the qualified voters voting on the Referendum Question shall vote in favor of repeal of the ordinance, such ordinance shall be immediately repealed upon declaration of the election results by the Town Clerk.

## **7.3 Power of Recall**

### **7.3.1 Grant of Power**

The voters of the Town of Topsham shall have the power to remove from office for just cause any duly elected Town Councilor, such power being known as Recall.

### **7.3.2 Initiation**

The Recall process may be initiated either by order of the Town Council as allowed by this Charter or by a petition signed within a single thirty (30) day period by a number of qualified voters of the Town equal to or greater than twenty (20) percent of the total number of qualified voters who cast votes for Governor in the most recent gubernatorial election.

### **7.3.3 Form of Petition / Affidavit of Circulator**

All signatures shall be obtained on a petition form provided by the Town Clerk. The name of the Councilor to be removed from office and the just cause(s) for removal shall be listed on petition form. Each person signing the petition shall include, in addition to his or her voter signature, the date signed, the printed name of the person signing, and the street address of the person signing. All petition forms shall be assembled as one document for filing. Each petition form shall include an affidavit of the circulator thereof stating that the circulator personally circulated the form, the number of signatures on the form, that each signature was obtained in the presence of the circulator, that the circulator believes each

signature to be the genuine signature of the person whose name it purports to be, and that each signer had the opportunity before signing to read the full name of the person sought to be recalled and the just cause(s) for removal.

#### **7.3.4 Sufficiency Determination**

Within seven (7) days after receipt of a Recall petition the Town Clerk shall complete a determination as to its sufficiency and shall prepare a certificate and file with the Town Council and the petitioner as to the sufficiency of the petition, specifying, if it is insufficient, why it is defective.

If a petition has been certified as being insufficient, the petitioner may, within two (2) days after receiving the certificate, file a request that the petition sufficiency be reviewed by the Town Council. The Town Council shall review the certificate at its next meeting following the filing of such request and shall make a final determination as to the sufficiency of the petition. If no such request is received, the sufficiency determination of the petition shall be considered final on the seventh (7<sup>th</sup>) day after the certificate is received by the Town Council.

#### **7.3.5 Recall Question Election**

Upon certification of sufficiency of a Recall petition the Town Council shall, within forty-five (45) days, hold a Recall Question Election for the purpose of submitting the question of recall to a vote of the qualified voters of the Town. Pending the outcome of the election, the Town Councilor subject to recall shall continue to exercise all of the privileges of the office. A Town Councilor shall be recalled when a majority of those voting thereon shall have voted in the affirmative so long as the total number of votes cast for and against recall is at least thirty (30) percent of the total number of qualified voters who cast votes in the election in which the Town Councilor subject to recall was elected.

#### **7.3.6 Special Election to Fill a Vacancy due to Recall**

The Town Council shall, within sixty (60) days after the voters have recalled a Town Councilor, hold a special election to fill the vacancy.

A Town Councilor who has been recalled by the voters shall be allowed to seek re-election at the special election called for the purpose of filling the vacancy created by the recall by filing a notice with the Town Clerk that he or she wishes to have his or her name appear on the ballot. The request shall be filed by the fifteenth (15<sup>th</sup>) day after the recall election and need not include a nomination petition. Other qualified voters who seek to fill the vacancy created by the recall shall have until the fifteenth (15<sup>th</sup>) day after the recall election to file a nominating petition with the Town Clerk. Except for the time of filing, these nominating petitions shall meet the same requirements as for an Annual Municipal Election.



## **Chapter 8: Transitional Provisions**

### **8.1 Charter Effective Date**

Except as provided below, this Charter, if approved, shall become effective immediately upon adoption, but only for the limited purpose of conducting a Special Municipal Election to elect initial Town Council members as necessary. The selectmen shall arrange for such election to be held in May or June of 2009 on such date as is determined prudent by the Board of Selectmen, taking into consideration other federal, state, or local school district elections that may be scheduled. For all other purposes, this Charter shall become effective on July 1, 2009.

### **8.2 First Council**

#### **8.2.1 Transition of Selectmen to Town Councilors**

The persons holding office as Selectman upon adoption of this Charter may elect to continue serving as Town Councilors as follows:

By December 31, 2008 a Selectman desiring to continue service as a Town Councilor on July 1, 2009 shall notify the Town Clerk, in writing, of his or her intent to be sworn in as a Town Councilor and to support the Town of Topsham Charter. Any Selectman failing to make such notification by this date shall forfeit the ability to transition to the office of Town Councilor without additional election.

The term of office for any such Selectman to Town Councilor transition shall expire upon election of a replacement Council member at the Annual Municipal Election in November of the year that the term of office as Selectman would have otherwise expired.

#### **8.2.2 Special Municipal Election**

At the Special Municipal Election conducted as described in Section 8.1 above, two (2) Town Councilor positions shall be elected. The terms of these Council members shall commence on July 1, 2009 and shall expire upon election of replacement Council members on a staggered schedule as set forth below.

The Council member candidates in the Special Municipal Election shall be ranked based on the number of votes received with the candidate receiving the highest number of votes being ranked 1, the candidate receiving the second highest number of votes being ranked 2, and so on. In the case of a tie, ranking order shall be determined by lot.

The Council member candidate in the Special Municipal Election ranked 1 shall be elected for a term ending with the Annual Municipal Election in November of 2012.

The Council member candidate in the Special Municipal Election ranked 2 shall be elected for a term ending with the Annual Municipal Election in November 2011.

In addition to the election of the two (2) Town Council positions described above, the Special Municipal Election may also include election of Town Council positions made vacant by Selectmen opting not to transition to Town Council positions or made vacant for any other reason. The term of office for these positions shall be the remaining term of the vacant position.

### **8.2.3 Initial Council member salary**

Each Councilor shall receive an annual salary of \$3,000. The salary of Councilors may be modified as established by this Charter.

### **8.3 First Meeting**

The Town Council shall meet on July 1, 2009 at 7:00 PM, or as soon thereafter as the meeting can be conducted, at a meeting place previously determined by the Board of Selectmen for the purposes of:

1. Taking the oath of office.
2. Electing a Chair and Vice-Chair
3. Taking up such other business as the Council may wish to consider.

### **8.4 First Budget**

The budget of the Town which is in effect on the effective date of this Charter shall continue in effect and may be amended only as permitted by this Charter.

### **8.5 Existing Ordinances, Repealed Ordinances**

Chapter 6: Administration of Government of the Town of Topsham Town Code shall be repealed on the effective date of this Charter. All other Town ordinances, regulations, orders, or resolves in force at the time this Charter takes effect, not inconsistent with this provisions of this Charter, shall continue in force until amended or repealed.

### **8.6 Existing Contracts and/or Obligations**

All rights, actions, proceedings, prosecutions, and contracts of the Town or any of its departments, pending when this Charter goes into effect and not inconsistent with this

Charter, shall be enforced, continued or completed in all respects as though begun or executed hereunder.

APPENDIX B

Certification Letter

Richard L. Hornbeck, Esq.  
Moncure & Barnicle

*MONCURE & BARNICLE*

ATTORNEYS AT LAW

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JOHN MONCURE\*

JOHN F. BARNICLE

RICHARD L. HORNBECK

JESSICA L. MAHER \*\*

THOMAS W. BELL

\*ALSO ADMITTED IN NY & THE DISTRICT OF COLUMBIA

\*\*ALSO ADMITTED IN MA

Street Address:

9 Bowdoin Mill Island

Topsham, ME 04086

August 20, 2008

Richard Snow, Chairman  
Topsham Charter Commission  
33 Arbor Avenue  
Topsham, Maine 04086

Re: Certification pursuant to Title 30-A § 2103(D)(4)

Dear Dick,

I am an attorney admitted to the bar of the State of Maine. I submit this written opinion to the Topsham Charter Commission pursuant to Title 30-A§ 2103(D)(4). I certify that I have reviewed the proposed charter for the Town of Topsham submitted by the Topsham Charter Commission and it does not contain any provision prohibited by the United States Constitution, the Constitution of the State of Maine or the general laws.

If you need any additional information, please feel free to contact me.

Sincerely,



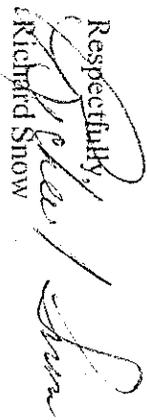
Richard L. Hornbeck

RLH/djt

TO: Board of Selectmen  
Town of Topsham

FROM:  
Richard Snow  
Chairman, Topsham Charter Commission

Pursuant to State Statute I am submitting the financial expenditures of the Commission. The original \$10,000 appropriation was not expended and we leave a balance of \$4,118.57. Your cooperation in our task is appreciated and I hope that, whatever, the outcome, we have contributed to our town and its citizens.

Respectfully,  
  
Richard Snow  
Chairman

The record of appropriations:

9/3/05

		TOPSHAM CHARTER COMMISSION EXPENDITURES	FINAL		
TOTAL APPROPRIATION					\$10,000.00
date					
11/5/2007	\$6,000.00	for Legal Services	\$6,000.00		
				for reserve/outreach	\$4,000.00
10/12/2007		Public Notice of 10 22 Hearing		14.65 x 2	\$29.30
10/16/2007		Public Notice of 10 22 Hearing		10.46 x 1.95	\$20.40
10/17/2007		Public Notice of 10 22 Hearing		10.46 x 1.95	\$20.40
10/18/2007		Public Notice of 10 22 Hearing		10.46 x 1.95	\$20.40
10/19/2007		Public Notice of 10 22 Hearing		10.99	1.95
12/28/2007		Topsham Charter Survey in Coyer 5,000		250	\$250.00
4/24/2008		Absentee research and Opinion	\$437.50		
5/22/2008		Pre Review of Draft	\$1,050.00	8hrs.	
6/4/2008		Preliminary Draft copies		500 copies	\$350.00
8/21/2008		Final Bill on Certification	\$3,682.00		
		TOTAL	\$5,169.50		TOTAL \$711.93
		for Legal Services	\$830.50		for reserve/outreach \$3,288.07
		Amount not spent	\$4,118.57		