

Memorandum

To: Selectboard
Cc: Charter Review Committee; Department Heads; Planning Commission; Zoning Board of Adjustment; Housing Commission
From: Greg Duggan, Town Manager
Re: Proposed charter amendments
Date: December 16, 2022

Issue

The issue is for the Selectboard to consider proposed amendments to the Town of Essex Charter.

Discussion

The Selectboard appointed a Charter Review Committee this past summer, and the Committee met weekly from September 20 through November 22 to review the Town Charter and propose amendments. After reviewing proposed amendments on December 5, the Selectboard decided to warn public hearings (January 17, 30) for five of the proposed changes. Following the public hearings the Selectboard may choose to put the proposed charter amendments on the Town Meeting ballot in March. The proposed amendments include the following:

1. Reorganization of the charter
2. Addition of a section giving the Town the ability to adopt and enforce ordinances for the purpose of regulating, licensing, and fixing reasonable and necessary license fees
3. Addition of a section giving the Town the ability to create an ordinance about just cause eviction
4. Addition of a recall provision for Selectboard members
5. Creation of a Development Review Board and concurrent elimination of a Zoning Board of Adjustment

Staff and legal counsel recommend each item be voted as a separate question. That way, voters can decide on each topic individually, rather than all items being voted up or down as a package.

Any charter amendments approved by voters would need to go to the Vermont Legislature for final approval.

The Charter Review Committee's proposed language for each change is attached.

1. Reorganization of the charter
The Charter Review Committee proposed a reorganization of the charter to help it flow better and be more accessible to readers. The existing Town Charter is attached, with track changes showing how a reorganized charter would look. This version of the Town Charter does not include any of the other amendments proposed by the Charter Review Committee

Staff recommendation: As long as the proposed reorganization has no legal implications, staff has no opinion on the amendment. The Town Attorney is in the process of reviewing the proposed reorganization and does not yet have feedback on the changes.
2. Ability to set fees
This item was recommended for consideration by the Town Manager in regards to setting dog licensing fees. In the past few years, the Clerk's Office proposed an increase in dog licensing fees to better account for the time and materials spent on licensing, but we learned that dog license

fees can only be set in accordance with statute unless a charter gives the authority to set different fees.

The Charter Review Committee proposed additional areas where the Town could set fees, if it were to adopt and enforce ordinances. Charter Review Committee Chair Lauren Layman noted that the proposed language was modeled on the South Burlington charter, and that similar language exists in the Berlin, Springfield, St. Albans, and Williston charters. The Town Attorney has advised that including such a section in the Essex charter could give the Town a tool to create additional revenue streams.

Although South Burlington has a variety of areas where its charter allows for licensing fees, it does not currently charge fees in all areas.

Essex Clerk Susan McNamara-Hill also suggested adding fees for liquor license holders, to process requests for special events and catering permits. Ms. McNamara-Hill said, "The requests are often from businesses that are not licensed in Essex, but are serving liquor at an event in Essex. The businesses pay a fee to the state but the town does not collect any fee currently. The town must approve the permits, which we do after police department and zoning office review." Staff is looking into adding this option to the language proposed by the Charter Review Committee.

Staff recommendation: Staff supports including the section and having the ability to set fees as the Town deems appropriate, such as to cover staff time and expense of materials. Staff would need to determine which areas warrant fees, and what the cost of those fees should be, before making a recommendation to the Selectboard for ordinances.

3. Just cause eviction

This item was recommended for consideration by Rights to Democracy. Staff has many questions and concerns that we think should be answered and considered prior to pursuing a vote on this item.

The City of Burlington approved a similar charter change last year, but the charter change has not been adopted. The change was passed by the Legislature before being vetoed by the Governor. The Legislature failed to override the veto.

The proposal presents several challenges:

- The language is based on input from one perspective. Other input could be solicited from the Essex Housing Commission (see attached for comments from some individual Housing Commissioners), Community Development, the Vermont Association of Realtors, the Vermont Landlord Association, the Champlain Valley Office of Economic Opportunity (which runs a Tenants Rights Resources Hotline), and the State's Agency of Commerce and Community Development (which provides resources to renters and landlords), to name a few.
- The language, as proposed, raises questions such as the following:
 - When listing certain situations considered "just cause" but also specifying that the list is not all-inclusive, what additional grounds could be considered "just cause" eviction, and who would make that determination?

- What are considered “good faith renewal terms,” and who would make that determination?
- Who would determine whether relocation expenses or rent increases are reasonable?
- Essex has fewer renters than Burlington, so we are unaware of the extent of the problem of just cause eviction in Essex.
- If the charter amendment were to be approved by Essex voters, the Legislature, and the Governor, then the Town of Essex would be the first municipality in Vermont to be able to implement a just cause eviction ordinance. Although staff is not opposed to leading and setting precedent, we prefer to do so having fully vetted our approach. In this case, we have no model and no experience creating and enforcing a just cause eviction ordinance. The Police Chief has indicated that the Police would not be able to enforce such an ordinance. Nor would the Community Development Department, unless new staff was hired for either department. We do not know the cost or the time commitment that would be required, and have no model from which to make an educated guess.
- Staff has questions about who would be responsible for enforcement and what the process of adjudication would be. Currently, grievances between landlords and tenants are civil matters between private parties resolved in court. Existing staff does not have the capacity to handle eviction disputes. Would violations result in a civil process via lawsuits, or municipal tickets?
- Deputy Health Officer and Zoning Administrator Sharon Kelley said many health complaints come in as a result of a tenant retaliating to receiving an eviction notice. When the issues go to court, Ms. Kelley said, the state provides a legal aid office for people who do not have the resources to pay for a lawyer, and also offers a program where a tenant can pay rent while issues are negotiated between parties or resolved with the court.
- Would such an ordinance have the unintended impact of further limiting housing options, by making landlords much more selective in choosing tenants?
- If adopted in Essex, the Town may need to defend legal challenges to a just cause eviction ordinance and/or individual cases.
- The Town Attorney has advised that there may be a statewide proposal for just cause eviction at the state legislative level, which may need to overcome a veto.

Staff recommendation: Staff recommends this question not be included on the ballot for 2023 Town Meeting. Instead, staff recommends that the Town wait to see if another municipality adopts and enacts such language, if the legislature approves a just cause eviction law at the state level, or some combination thereof.

4. Recall provision

This item was proposed by resident Brad Kennison. Mr. Kennison has reviewed the language proposed by the Charter Review and submitted additional feedback (see attached).

The Charter Review Committee considered 14 Vermont charters in making its recommendation for a recall provision. As proposed, a recall vote would require signatures from 15 percent of the registered voters (as opposed to 5 percent for a normal petition), to be submitted to the Board of Civil Authority. The Charter Review Committee lists allowable grounds for removal of a Selectboard member, and proposed that the Board of Civil Authority certify whether the grounds have been met.

Staff has a few other comments for consideration. Essex Clerk Susan McNamara-Hill noted that the Selectboard is part of the Board of Civil Authority, though the proposed language would prohibit the Selectboard member(s) facing a recall vote from sitting on the BCA for the determination hearing. Ms. McNamara-Hill also noted that most petitions are filed with the municipal clerk rather than the BCA; the Town Attorney also recommends that a recall petition be filed with the Town Clerk, who could then forward a valid petition to the BCA or Selectboard for action.

The grounds for removal proposed by the Charter Review Committee include “crimes in office,” “corruption,” and “theft.” Staff recommends specifying if those grounds in particular can be considered once an accusation or charge is made, or only after a Selectboard member has been found guilty. The Town Attorney found only one charter in Vermont that listed “cause” for removal. All others do not require specification of a reason for a recall petition.

Staff and the Town Attorney also recommend that the recall provision, if put to voters, include more detail about some of the recall processes. For instance, a petition may need to be circulated over a limited period of time (as opposed to taking months to collect signatures); a Selectboard may need to hold a special election within a certain period of time after receiving a valid petition; and whether there is a limit to the number of times a Selectboard member may be subject to recall.

Staff recommendation: Staff has no opinion about whether or not a recall provision should be included in the charter. If a provision is included, staff recommends clarifying parts of the provision as discussed above, and as preferred by the Selectboard for policy reasons.

5. Change from Zoning Board of Adjustment (ZBA) to Development Review Board (DRB) and change in number of Planning Commission members

The Town Manager and Community Development Director Katherine Sonnick suggested the Charter Review Committee and Town look at the possibility of moving from a ZBA to a DRB.

The Charter Review Committee’s proposal is to move to a DRB on or before July 1, 2024. The Charter Review Committee also proposed five members and alternates on the Planning Commission and DRB. Planning Commissioners would not be eligible to hold any other office in the Town.

As noted above, staff supports the consideration of and eventual move to a DRB, but also recommends taking a more measured approach and leaving more flexibility on the number of members on each board. Past conversations in Essex about the creation of a DRB have happened under the context of consolidation and then merger with the Village of Essex Junction. The Town has not considered such a change on its own. Staff recommends involving the Planning Commission and Zoning Board in the planning and community conversation around a transition to a DRB. Ms. Sonnick has provided an attached summary about the roles of a PC/ZBA and a PC/DRB.

Statute also allows the Planning Commission and DRB to have anywhere from five to nine members, and staff recommends leaving the number of members unspecified in the charter. Staff also thinks the prohibition on Planning Commissioners holding other office should not be

included; at minimum, it may be helpful and informative to have some members serving on the DRB and Planning Commission simultaneously.

The Town Attorney recommends that the only charter change that may be necessary is to allow the Selectboard to appoint a ZBA “or Development Review Board,” and said other details such as number of members and transition period can be handled through a resolution adopted by the Selectboard.

Staff recommendation: Keep it simple. Include language giving the Town the option to have either a ZBA or a DRB. Let the charter remain silent on the number of members for the ZBA, DRB, or Planning Commission, and instead use the flexibility allowed by statute.

Based on discussion and feedback from the Selectboard, staff will suggest any changes to the Charter Review Committee’s proposed language for consideration and approval by the Selectboard on January 3, 2023.

Cost

None at this time.

Recommendation

This memo is for information and discussion. Staff will consider any feedback in proposing final language for Selectboard approval on January 3, 2023.

Town of Essex Proposed Charter Revisions 2022 – Reorganization of existing charter

The Vermont Statutes Online

[Title 24 Appendix: Municipal Charters](#)

[Chapter 117: Town Of Essex](#)

Subchapter 1: Powers Of The Town

§ 117-101. Corporate existence retained

The inhabitants of the Town of Essex, within the corporate limits as now established, shall continue to be a municipal corporation by the name of the Town of Essex. Notwithstanding the provisions of any other municipal charters, territory within the corporate limits shall not be annexed to or become a part of any other municipal corporation except by annexation procedures as set forth in the statutes of the State of Vermont.

§ 117-102. General law, application

Except as modified by the provisions of this charter, or by any lawful regulation or ordinance of the Town of Essex, all provisions of the statutes of this State applicable to towns shall apply to the Town of Essex.

§ 117-103. Powers of the Town

(a) The Town shall have all of the powers granted to towns and municipal corporations by the Constitution and laws of this State; it may enact ordinances, bylaws, and regulations not inconsistent with the Constitution and laws of the State of Vermont or with this charter, and impose penalties for the violation thereof.

(b) The Town may acquire property within or without its corporate limits for any town purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, or lease, and may sell, lease, mortgage, hold, manage, and control such property as its interests may acquire. The Town may further acquire property within its corporate limits by condemnation where granted to towns by the statutes of the State of Vermont.

(c) The Town may establish and maintain departments or divisions, as deemed appropriate by the Selectboard for the efficient maintenance and operation of Town affairs, to include, by way of illustration and not by way of limitation, police, fire, water, and public works departments.

(d) The Town may establish and maintain an electric power system and regulate power line installations; provided, however, that the Town shall have no authority under this charter that conflicts with that authority granted to the Public Service Department or any other State regulatory agency.

§ 117-104. [Repealed.]

§ 117-105. Ordinances- Method of adoption and enforcement

(a) The Selectboard may provide penalties for the breach of any ordinance authorized by general law or this charter, may prosecute any person violating the same through the Town Grand Juror or police officers who for such purposes shall be informing officers, and may maintain actions to restrain actual or threatened violations of the same; the establishment of any fine or penalty shall be by ordinance.

~~§ 117-105. Ordinances- Method of adoption and enforcement~~

~~(b) Ordinance-making authority granted to the Town by this charter and general law shall be exercised pursuant to the provisions of sections 106 through 109 of this charter.~~

§ 117-110. Reservation of powers to the Town

Nothing in this charter shall be so construed as in any way to limit the powers and functions conferred upon the Town of Essex and the Selectboard of the Town by general or special enactments in force or effect or hereafter enacted; and the powers and functions conferred by this charter shall be cumulative and in addition to the provisions of such general or special enactments.

§ 117-106. Introduction; first and second readings; public hearing

§ 117-105. Ordinances- Method of adoption and enforcement

(b) Ordinance-making authority granted to the Town by this charter and general law shall be exercised pursuant to the provisions of sections 106 through 109 of this charter.

(a) Every ordinance shall be introduced in writing. The enacting clause of all ordinances shall be "The Selectboard of the Town of Essex hereby ordains...". If the Selectboard passes the proposed ordinance upon first reading they shall cause it to be published in a newspaper of general circulation in the Town in the form passed, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, together with a reference to a place within the Town where copies of the full text of the proposed ordinance may be examined, at least once, together with a notice of the time and place when and where there will be a public hearing to consider the same for final passage. The first such publication shall be at least one week prior to the date of said public hearing. Any published notice shall explain citizens' rights to petition for a vote on the ordinance at an annual or special meeting pursuant to 24 V.S.A. § 1973 and shall also contain the name, address, and telephone number of a person with knowledge of the ordinance who is available to answer questions about it.

(b) At the time and place so advertised, or at any time and place to which the hearing may from time to time be adjourned, the ordinance shall be introduced, and thereafter, all persons interested shall be given an opportunity to be heard.

(c) After the hearing, the Selectboard may finally pass the ordinance with or without amendment, except that if the Selectboard make an amendment they shall cause the amended ordinance to be published pursuant to section 106(a) hereof at least once together with a notice of the time and place of a public hearing at which the amended ordinance will be further considered, which publication shall be at least three days prior to the public hearing. At which time so advertised or at any time and place to which the meeting may be adjourned, the amended ordinance shall be introduced, and after the hearing, the Selectboard may finally pass the amended ordinance, or again amend it subject to the same procedures as outlined herein. § 117-106. Ordinances- Method of adoption and enforcement

(a) Ordinance-making authority granted to the Town by this charter and general law shall be exercised pursuant to the provisions of Subchapter 3 of this charter.

§ 117-107. Effective date

Every ordinance shall become effective upon passage unless otherwise specified.

§ 117-108. Filing

The Town Clerk shall prepare and keep in the Town Clerk's office a book of ordinances that shall contain each ordinance finally passed by the Selectboard, together that a complete index of the ordinances according to subject matter.

§ 117-109. Annual Town report

The annual Town report shall be distributed to the legal voters of the Town not later than 10 days prior to the annual meeting.

Commented [GD1]: Will need to renumber sections if reorganization is approved

Commented [GD2]: Make sure this references the correct section

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Subchapter 2: Officers

§ 117-201. Officers generally

The elected officers of the Town of Essex shall be Selectboard members and Moderator. These officers shall have all the powers and duties necessary to carry out the provisions of this charter as well as those provided by law. The terms of the officers shall commence on the first day of the month following the month of election.

§ 117-202. Selectboard- Number, terms of office, election

- (a) There shall be a Selectboard consisting of five members.
- (b) The terms of office of Selectboard members shall be for three years.
- (c) Unless necessary to fill a vacancy, no more than two Selectboard members shall be elected at any annual meeting. Notwithstanding, the terms of the presently elected Selectboard members shall not be modified by this section.
- (d) All Selectboard members shall be elected at large.

§ 117-203. Organization

~~(a) As soon as practicable after the first day of the month of the month following annual Town meeting, the Selectboard shall organize and elect a Chairperson, Vice Chairperson and Clerk by a majority vote of the entire Board, and shall file a certificate of the election for record in the office of the Town Clerk.~~

~~(b) The Chairperson of the Selectboard or in the Chairperson's absence, the Vice Chairperson, shall preside at all meetings of the Board and shall be recognized as the head of the Town government for all ceremonial purposes.~~

~~(c) In the event of death, resignation, or incapacity of any Selectboard member, the remaining members of the Board may appoint a person eligible to fill that position. At the next annual meeting, the vacancy shall be filled by serving the remaining balance of the term. Incapacity shall include the failure by any member of the Board to attend at least 50 per cent of the meetings of the Board in any calendar year. In the event the Board is unable to agree upon an interim replacement until the next annual Town meeting, a special election shall be held forthwith to fill the position.~~

§ 117-208. Compensation of Selectboard; appointees

(a) Compensation paid to the Selectboard members shall be set by the voters at the annual meeting, with a minimum of \$500.00 a year each. Selectboard members'; salaries must be set forth as a separate item in the annual budget presented to the meeting.

(b) The Selectboard shall fix the compensation of all officers and employees, except as otherwise provided in this charter.

§ 117-204. Meetings

~~(a) As soon as possible after the election of the Chairperson and Vice Chairperson, the Selectboard shall fix the time and place of its regular meetings and such meetings shall be held at least once a month.~~

~~(b) The Board shall determine its own rules and order of business.~~

~~(c) The presence of three members shall constitute a quorum.~~

~~(d) All meetings of the Board shall be open to the public unless, by an affirmative vote of the majority of the members present, the Board shall vote that any particular session shall be an executive session in accordance with 1 V.S.A. § 313.~~

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§ 117-205. Record of proceedings

~~(a) An official record of the proceedings of the Selectboard shall be kept by its Clerk, who need not be a member of the Selectboard, which shall be kept in the office of the Town Clerk and shall be open for public inspection. The Town Clerk shall keep official record of the proceedings of all special and annual Town meetings.~~

~~(b) The minutes of each meetings shall be approved by the Board at its next meeting and the official copy authenticated by the signature of the Clerk of the Board.~~

§ 117-206. Appointments by Selectboard

~~(a) The Selectboard shall appoint the members of the following permanent Commissions and positions:~~

~~(1) Zoning Board of Adjustment;~~

~~(2) Planning Commission;~~

~~(3) Town Attorney;~~

~~(4) Town Manager.~~

~~(b) The Selectboard may appoint such additional commissions as they feel to be in the best interest of the Town and all other appointive or elective officers authorized by statute.~~

~~(c) The terms of all appointments shall commence on the day after the day of appointment unless the appointment is to fill a vacancy in an office, in which case the term shall commence at the time of appointment.~~

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~~§ 117-207. Jurisdiction over other officers or employees~~

~~Neither the Selectboard nor any of its members shall direct or request the appointment, by any other officer or employee of the Town, of any person to office or employment, or his or her suspension or removal therefrom, or in any manner take part in the appointment, discipline, or removal of subordinates and employees of the Town, except as otherwise provided in this charter. The Selectboard and its members shall deal with that portion of the service of the Town for which the Manager is responsible solely through the Manager. This shall not be construed to prohibit the Selectboard from recommending to the Town Manager a prospective employee for his or her consideration, or bringing to the attention of the Manager any complaint concerning the actions of any officer or employee of the Town. This section shall not be construed to prohibit the review by the Selectboard of actions by the Manager or hearings brought to the Selectboard by employees pursuant to appellate rights granted them by statute.~~

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~~(b) The Selectboard shall fix the compensation of all officers and employees, except as otherwise provided in this charter.~~

~~§ 117-209. Powers and duties~~

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~~(a) The members of the Selectboard shall constitute the legislative body of the Town of Essex for all purposes required by statute and shall have all powers and authority given to, and perform all duties required of town legislative bodies or selectboards under the laws of the State of Vermont.~~

~~(b) Within the limitations of the foregoing, the Selectboard shall have the power to:~~

- ~~(1) appoint and remove the Town Manager and supervise, create, change, and abolish offices, commissions, or departments other than the offices, commissions, or departments established by this charter;~~
- ~~(2) appoint the members of all boards, commissions, committees, or similar bodies unless specifically provided otherwise by this charter;~~

- (3) provide for an independent audit by a registered or certified public accountant;
- (4) inquire into the conduct of any officer, commission, or department and investigate any and all municipal affairs;
- (5) exercise each and every other power that is not specifically set forth herein, but that is granted to the Selectboard by the statutes of the State of Vermont.

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- (1) Zoning Board of Adjustment;
- (2) Planning Commission;
- (3) Town Attorney;
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(b) The Selectboard may appoint such additional commissions as they feel to be in the best interest of the Town and all other appointive or elective officers authorized by statute.

(c) The terms of all appointments shall commence on the day after the day of appointment unless the appointment is to fill a vacancy in an office, in which case the term shall commence at the time of appointment.

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Subchapter 3: Town Meeting – Amendment Of Charter

Subchapter 3: Ordinances

§ 117-301. Application of general law

~~Provisions of the laws of the State of Vermont relating to the qualifications of voters, the manner of voting, the duties of election officers, and all other particulars respective to preparation for, conducting, and management of elections, so far as they may be applicable, shall govern all municipal elections, and all general and special meetings, except as otherwise provided in this charter.~~

§ 117-106. Introduction; first and second readings; public hearing

(a) Every ordinance shall be introduced in writing. The enacting clause of all ordinances shall be "The Selectboard of the Town of Essex hereby ordains...". If the Selectboard passes the proposed ordinance upon first reading they shall cause it

to be published in a newspaper of general circulation in the Town in the form passed, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, together with a reference to a place within the Town where copies of the full text of the proposed ordinance may be examined, at least once, together with a notice of the time and place when and where there will be a public hearing to consider the same for final passage. The first such publication shall be at least one week prior to the date of said public hearing. Any published notice shall explain citizens' rights to petition for a vote on the ordinance at an annual or special meeting pursuant to 24 V.S.A. § 1973 and shall also contain the name, address, and telephone number of a person with knowledge of the ordinance who is available to answer questions about it.

(b) At the time and place so advertised, or at any time and place to which the hearing may from time to time be adjourned, the ordinance shall be introduced, and thereafter, all persons interested shall be given an opportunity to be heard.

(c) After the hearing, the Selectboard may finally pass the ordinance with or without amendment, except that if the Selectboard make an amendment they shall cause the amended ordinance to be published pursuant to section 106(a) hereof at least once together with a notice of the time and place of a public hearing at which the amended ordinance will be further considered, which publication shall be at least three days prior to the public hearing. At which time so advertised or at any time and place to which the meeting may be adjourned, the amended ordinance shall be introduced, and after the hearing, the Selectboard may finally pass the amended ordinance, or again amend it subject to the same procedures as outlined herein.

§ 117-302. Time of holding

~~(a) The annual meeting of legal voters shall be held at 7:30 o'clock in the afternoon of the day specified in 17 V.S.A. § 2640(b) as the same may from time to time be amended and may transact at that time any business not involving voting by Australian ballot or voting required by law to be by ballot. A meeting so started shall be adjourned until the following day.~~

~~(b) The election of officers and the voting on all questions to be decided by Australian ballot or voting required by law to be by ballot shall take place on the day specified in 17 V.S.A. § 2640(a), which may from time to time be amended. The ballot boxes or voting machines shall be open for a minimum of nine consecutive hours between 6:00 a.m. and 10:00 p.m. as shall be determined and warned by the Selectboard.~~

§ 117-303. Budget

~~An annual budget shall be adopted at Town meeting by the vote of a majority of those eligible to vote present at the meeting. If, after the total budget has been appropriated, the Selectboard finds additional appropriations necessary, the appropriations shall be made and reported at the next Town meeting as a specific item. The appropriations shall only be made in special circumstances or situations of an emergency nature. No specific explanation need be given for any normal annual operating expense in any office, department, or agency that may be increased over the budget amount by an amount not more than 10 percent of the office's, department's, or agency's budget.~~

§ 117-304. Rescission of ordinances

~~All ordinances shall be subject to rescission by a special or annual Town meeting, as follows: If, within 44 days after final passage by the Selectboard of any such ordinance, a petition signed by voters of the Town not less in number than five percent of the qualified voters of the municipality is filed with the Town Clerk requesting its reference to a special or annual Town meeting, the Selectboard shall fix the time and place of the meeting, which shall be within 60 days after the filing of the petition, and notice thereof shall be given in the manner provided by law in the calling of a special or annual Town meeting. Voting shall be by Australian ballot. An ordinance so referred shall remain in effect upon the conclusion of the meeting unless a majority of those present and voting against the ordinance at the special or annual Town meeting exceeds five percent in number of the qualified voters of the municipality.~~

~~§ 117-305. Petition for enactment of ordinance; special meeting~~

~~(a) Subject to the provisions of section 304 of this charter, voters of the Town may at any time petition in the same manner as in section 304 for the enactment of any proposed lawful ordinance by filing the petition, including the text of the ordinance, with the Town Clerk. The Selectboard shall call a special Town meeting (or include the ordinance as annual meeting business) to be held within 60 days of the date of the filing, unless prior to the meeting the ordinance shall be enacted by the Selectboard. The warning for the meeting shall state the proposed ordinance in full or in concise summary and shall provide for an Australian ballot vote as to its enactment. The ordinance shall take effect on the 10th day after the conclusion of the meeting provided that voters as qualified in section 304, constituting a majority of those voting thereon, shall have voted in the affirmative.~~

~~(b) The proposed ordinance shall be examined by the Town Attorney before being submitted to the special Town meeting. The Town Attorney is authorized, subject to the approval of the Selectboard, to correct the ordinance so as to avoid repetitions, illegalities, and unconstitutional provisions and to ensure accuracy in its text and references and clearness and preciseness in its phraseology, but the Town Attorney shall not materially change its meaning and effect.~~

~~**(c) The provisions of this section shall not apply to any appointments of officers, members of commissions, or boards made by the Selectboard or to the appointment or designation of Selectboard, or to rules governing the procedures of the Selectboard.**~~

§ 117-107. Effective date

Every ordinance shall become effective upon passage unless otherwise specified.

§ 117-108. Filing

The Town Clerk shall prepare and keep in the Town Clerk's office a book of ordinances that shall contain each ordinance finally passed by the Selectboard, together that a complete index of the ordinances according to subject matter.

§ 117-304. Rescission of ordinances

All ordinances shall be subject to rescission by a special or annual Town meeting, as follows: If, within 44 days after final passage by the Selectboard of any such ordinance, a petition signed by voters of the Town not less in number than five percent of the qualified voters of the municipality is filed with the Town Clerk requesting its reference to a special or annual Town meeting, the Selectboard shall fix the time and place of the meeting, which shall be within 60 days after the filing of the petition, and notice thereof shall be given in the manner provided by law in the calling of a special or annual Town meeting. Voting shall be by Australian ballot. An ordinance so referred shall remain in effect upon the conclusion of the meeting unless a majority of those present and voting against the ordinance at the special or annual Town meeting exceeds five percent in number of the qualified voters of the municipality.

§ 117-305. Petition for enactment of ordinance; special meeting

(a) Subject to the provisions of section 304 of this charter, voters of the Town may at any time petition in the same manner as in section 304 for the enactment of any proposed lawful ordinance by filing the petition, including the text of the ordinance, with the Town Clerk. The Selectboard shall call a special Town meeting (or include the ordinance as annual meeting business) to be held within 60 days of the date of the filing, unless prior to the meeting the ordinance shall be enacted by the Selectboard. The warning for the meeting shall state the proposed ordinance in full or in concise summary and shall provide for an Australian ballot vote as to its enactment. The ordinance shall take effect on the 10th day after the conclusion of the meeting provided that voters as qualified in section 304, constituting a majority of those voting thereon, shall have voted in the affirmative.

(b) The proposed ordinance shall be examined by the Town Attorney before being submitted to the special Town meeting. The Town Attorney is authorized, subject to the approval of the Selectboard, to correct the ordinance so as to

avoid repetitions, illegalities, and unconstitutional provisions and to ensure accuracy in its text and references and clearness and preciseness in its phraseology, but the Town Attorney shall not materially change its meaning and effect.

(c) The provisions of this section shall not apply to any appointments of officers, members of commissions, or boards made by the Selectboard or to the appointment or designation of Selectboard, or to rules governing the procedures of the Selectboard.

Subchapter 4: Planning

Subchapter 4: Town Manager Powers and Duties

§ 117-601. Appointment of Manager

The Selectboard shall appoint a Town Manager under and in accordance with Vermont Statutes Annotated, as amended from time to time hereafter. The Manager shall have all of the powers and duties as set forth in that chapter and in this charter.

§ 117-602. Officials appointed by Manager

The Town Manager shall appoint with the approval of the Selectboard Town Clerk, Town Treasurer, Assistant Town Clerk, constables, Grand Juror, Director of Public Works, Police Chief, a Town Agent if the Town Attorney is not a resident of the Town of Essex, cemetery commissioners, Health Officer, fire wardens, Zoning Administrator, and, if needed, the Town Manager may appoint fence viewers, Inspector of Lumber and Shingles, and any other officer that the Selectboard of a Town is authorized to appoint if the Selectboard has not filled the office. The terms of the appointed officials shall commence on the first day of April following appointment. Appointments to fill a vacancy in an office shall be effective at the time of appointment and shall run for the unexpired period of the term. (Amended 1999, No. M-1, eff. Jan. 1, 1999.)

§ 117-901. Appointment and removal

All Town employees not elected by the voters shall be appointed, supervised, and removed by the Town Manager unless otherwise specified by this charter. There shall be no discrimination in employment on account of race, religion, sex, or political opinions. Appointments, lay-offs, suspensions, promotions, demotions, and removals shall be made primarily on the basis of training, experience, fitness, and performance of duties, in such manner as to insure that the responsible administrative officer may secure efficient service.

§ 117-902. Personnel rules and regulations

(a) The Town Manager or the Town Manager's appointee shall be the Personnel Director. The Town Manager shall maintain personnel rules and regulations protecting the interests of the Town and of the employees. These rules and regulations must be approved by the Selectboard and shall include the procedure for amending them and for placing them into practice. Each employee shall receive a copy of the rules and regulations when he or she is hired.

(b) The rules and regulations may deal with the following subjects or with other similar matters of personnel administration: job classification, jobs to be filled, tenure, retirement, pensions, leaves of absence, vacations, holidays, hours and days of work, group insurance, salary plans, rules governing hiring, temporary appointments, lay-off, reinstatement, promotion, transfer, demotion, settlement of disputes, dismissal, probationary periods, permanent or continuing status, in-service training, injury, employee records, and further regulations concerning the hearing of appeals.

§ 117-903. Prohibitions

No person in the service of the Town shall either directly or indirectly give, render, pay, or receive any service or other valuable thing for or on account of or in connection with any appointment, proposed appointment, promotion, or proposed promotion.

~~§ 117-401. Board established~~

~~A Planning Commission shall be established and its powers, obligations, and operation shall be under and in accordance with Vermont Statutes Annotated, as they may be amended from time to time hereafter.~~

Subchapter 5: Department Of Real Estate Appraisal

Subchapter 5: Annual Meeting

§ 117-301. Application of general law

Provisions of the laws of the State of Vermont relating to the qualifications of voters, the manner of voting, the duties of election officers, and all other particulars respective to preparation for, conducting, and management of elections, so far as they may be applicable, shall govern all municipal elections, and all general and special meetings, except as otherwise provided in this charter.

§ 117-109. Annual Town report

The annual Town report shall be distributed to the legal voters of the Town not later than 10 days prior to the annual meeting.

§ 117-703. Town meeting warning and budget

The proposed budget and the warning for the annual meeting shall be distributed to the legal voters of the Town at least 10 days before the annual meeting. In addition, the Selectboard shall comply with the statutory requirements applicable to town meetings in the warning of any annual or special meeting.

§ 117-302. Time of holding

(a) The annual meeting of legal voters shall be held at 7:30 o'clock in the afternoon of the day specified in 17 V.S.A. § 2640(b) as the same may from time to time be amended and may transact at that time any business not involving voting by Australian ballot or voting required by law to be by ballot. A meeting so started shall be adjourned until the following day.

(b) The election of officers and the voting on all questions to be decided by Australian ballot or voting required by law to be by ballot shall take place on the day specified in 17 V.S.A. § 2640(a), which may from time to time be amended. The ballot boxes or voting machines shall be open for a minimum of nine consecutive hours between 6:00 a.m. and 10:00 p.m. as shall be determined and warned by the Selectboard.

~~§ 117-501. Creation of Department~~

~~There shall be established a Department of Real Estate Appraisal headed by a professionally qualified real estate appraiser, who shall be appointed by the Manager with the approval of the Selectboard.~~

~~§ 117-502. Appraisal of property~~

~~The Department of Real Estate Appraisal shall appraise all real and business personal property for the purpose of establishing the grand list. Appraisals shall be reviewed periodically and kept up to date. Technically qualified individuals or firms may be employed as needed.~~

Commented [GD3]: I believe this is a new section header, with content from the existing charter about Annual Meeting

Commented [GD4]: Does this section only apply to Town Meeting, or at all times and all elections?

~~§ 117-503. Appraisal of business personal property for tax purposes~~

~~Appraisal of business personal property shall be in accordance with the provisions of 32 V.S.A. § 3618, as the same may from time to time be amended provided that all business personal property acquired by a taxpayer after September 30, 1995 shall be exempt from tax.~~

~~§ 117-504. Duties of Department~~

~~The duties and powers of the Department of Real Estate Appraisal shall be the same as those established for listers under the general statutes.~~

~~§ 117-505. Purpose~~

~~The purpose of the Department of Real Estate Appraisal is to provide for appointment of a qualified real estate assessor rather than the election of listers. The Town shall be governed by, and each taxpayer shall have rights granted by the applicable statutes concerning real and personal property taxation, appeal therefrom, and other statutes concerning taxation.~~

Subchapter 6: Town Manager

Subchapter 6: Budget

§ 117-701. Fiscal year

The fiscal year of the Town shall begin on the first day of July and end on the last day of June of each calendar year. The fiscal year shall constitute the budget and accounting year as used in this charter. In the event of a consolidation between the Essex Town School District and the Village of Essex Junction Graded School District, the consolidated entity shall adopt the same fiscal year as the Town.

§ 117-702. Preparation and submission

(a) The Town Manager, at least 50 days before annual Town meeting, or at such previous time as the Town Manager may be directed by the Selectboard, shall submit to the Selectboard a budget containing:

- (1) An estimate of the financial condition of the Town as of the end of the fiscal year.
- (2) An itemized statement of appropriations recommended for current expenses, and for capital improvements, during the next fiscal year; with comparative statements in parallel columns of appropriations and estimated expenditures for the current fiscal year and actual appropriations and expenditures for the immediate preceding fiscal year.
- (3) An itemized statement of estimated revenues from all sources, other than taxation, for the next fiscal year; and comparative figures of tax and other sources of revenue for the current and immediate preceding fiscal years.
- (4) A capital budget for the next five fiscal years, showing anticipated capital expenditures, financing, and tax requirements.
- (5) Such other information as may be required by the Selectboard.

(b) The budget shall be published not later than two weeks after its preliminary adoption by the Selectboard. The board shall fix the time and place for holding a public hearing for the budget, and shall give a public notice of such hearing. The board shall then review the budget and recommend it, with or without change, to the annual Town meeting.

§ 117-303. Budget

An annual budget shall be adopted at Town meeting by the vote of a majority of those eligible to vote present at the meeting. If, after the total budget has been appropriated, the Selectboard finds additional appropriations necessary, the appropriations shall be made and reported at the next Town meeting as a specific item. The appropriations shall only be made in special circumstances or situations of an emergency nature. No specific explanation need be given for any

Commented [GD5]: Need to make sure section numbers match up, if approved

normal annual operating expense in any office, department, or agency that may be increased over the budget amount by an amount not more than 10 percent of the office's, department's, or agency's budget.

§ 117-704. Appropriation

From the effective date of the budget, the several amounts stated therein, as approved by the annual town meeting, become appropriated to the several agencies and purposes therein named.

§ 117-705. Amount to be raised by taxation

Upon passage of the budget by the annual Town meeting, the amounts stated therein as the amount to be raised by taxes shall constitute a determination of the amount of the levy for the purposes of the Town in the corresponding tax year and the Selectboard shall levy such taxes on the grand list by the Assessor for the corresponding tax year.

§ 117-706. [Reserved.]

§ 117-707. Transfers of appropriations

(a) The Manager may at any time transfer an unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department, or agency.

(b) At the request of the Manager, the Selectboard may, by resolution, transfer any unencumbered appropriation balance or portion thereof within the Selectboard's budget from one department, office, or agency to another. Notwithstanding the above, no unexpended balance in any appropriation not included in the Selectboard's budget shall be transferred or used for any other purpose.

§ 117-601. Appointment of Manager

The Selectboard shall appoint a Town Manager under and in accordance with Vermont Statutes Annotated, as amended from time to time hereafter. The Manager shall have all of the powers and duties as set forth in that chapter and in this charter.

§ 117-602. Officials appointed by Manager

The Town Manager shall appoint with the approval of the Selectboard Town Clerk, Town Treasurer, Assistant Town Clerk, constables, Grand Juror, Director of Public Works, Police Chief, a Town Agent if the Town Attorney is not a resident of the Town of Essex, cemetery commissioners, Health Officer, fire wardens, Zoning Administrator, and, if needed, the Town Manager may appoint fence viewers, Inspector of Lumber and Shingles, and any other officer that the Selectboard of a Town is authorized to appoint if the Selectboard has not filled the office. The terms of the appointed officials shall commence on the first day of April following appointment. Appointments to fill a vacancy in an office shall be effective at the time of appointment and shall run for the unexpired period of the term. (Amended 1999, No. M-1, eff. Jan. 1, 1999.)

Subchapter 7: Budget

Subchapter 7: Taxation

§ 117-801. Taxes on real and personal property

Taxes on real and personal property shall be paid in two equal payments, with one-half of the annual tax bill for each taxpayer due and payable on September 15 and March 15 of each fiscal year.

§ 117-802. Penalty

An additional charge of eight percent shall be added to any tax not paid on or before the dates specified in section 801 of this charter, and interest as authorized by Vermont statutes.

§ 117-803. Board of Abatement

The Board of Civil Authority shall constitute a Board of Abatement as provided by law. The Board of Abatement shall meet and discharge its duties as required by the applicable statutory provisions.

§ 117-804. Assessment and taxation agreement

Notwithstanding any other provisions of this charter and the requirements of the general law of the State of Vermont, the Selectboard is authorized to negotiate and execute assessment and taxation agreements between the Town and a taxpayer or taxpayers within the Town consistent with applicable requirements of the Vermont Constitution.

§ 117-701. Fiscal year

The fiscal year of the Town shall begin on the first day of July and end on the last day of June of each calendar year. The fiscal year shall constitute the budget and accounting year as used in this charter. In the event of a consolidation between the Essex Town School District and the Village of Essex Junction Graded School District, the consolidated entity shall adopt the same fiscal year as the Town.

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(a) The Town Manager, at least 50 days before annual Town meeting, or at such previous time as the Town Manager may be directed by the Selectboard, shall submit to the Selectboard a budget containing:

- (1) An estimate of the financial condition of the Town as of the end of the fiscal year.
- (2) An itemized statement of appropriations recommended for current expenses, and for capital improvements, during the next fiscal year, with comparative statements in parallel columns of appropriations and estimated expenditures for the current fiscal year and actual appropriations and expenditures for the immediate preceding fiscal year.
- (3) An itemized statement of estimated revenues from all sources, other than taxation, for the next fiscal year, and comparative figures of tax and other sources of revenue for the current and immediate preceding fiscal years.
- (4) A capital budget for the next five fiscal years, showing anticipated capital expenditures, financing, and tax requirements.
- (5) Such other information as may be required by the Selectboard.

(b) The budget shall be published not later than two weeks after its preliminary adoption by the Selectboard. The board shall fix the time and place for holding a public hearing for the budget, and shall give a public notice of such hearing. The board shall then review the budget and recommend it, with or without change, to the annual Town meeting.

§ 117-703. Town meeting warning and budget

The proposed budget and the warning for the annual meeting shall be distributed to the legal voters of the Town at least 10 days before the annual meeting. In addition, the Selectboard shall comply with the statutory requirements applicable to town meetings in the warning of any annual or special meeting.

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From the effective date of the budget, the several amounts stated therein, as approved by the annual town meeting, become appropriated to the several agencies and purposes therein named.

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~~Upon passage of the budget by the annual Town meeting, the amounts stated therein as the amount to be raised by taxes shall constitute a determination of the amount of the levy for the purposes of the Town in the corresponding tax year and the Selectboard shall levy such taxes on the grand list by the Assessor for the corresponding tax year.~~

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Subchapter 8: Taxation

Subchapter 8: Planning, Development, and Public Safety

§ 117-401. Board established

A Planning Commission shall be established and its powers, obligations, and operation shall be under and in accordance with Vermont Statutes Annotated, as they may be amended from time to time hereafter.

~~§ 117-802. Development Review Board~~

~~A Development Review Board shall be established and its powers, obligations, and operation shall be under and in accordance with Vermont Statutes Annotated, as they may be amended from time to time hereafter. The Development Review Board shall consist of five regular members and alternate members as necessary, appointed by the Town Selectboard in accordance with 24 V.S.A. § 4460, as may be amended from time to time.~~

~~§ 117-801. Taxes on real and personal property~~

~~Taxes on real and personal property shall be paid in two equal payments, with one-half of the annual tax bill for each taxpayer due and payable on September 15 and March 15 of each fiscal year.~~

~~§ 117-802. Penalty~~

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~~§ 117-804. Assessment and taxation agreement~~

~~Notwithstanding any other provisions of this charter and the requirements of the general law of the State of Vermont, the Selectboard is authorized to negotiate and execute assessment and taxation agreements between the Town and a taxpayer or taxpayers within the Town consistent with applicable requirements of the Vermont Constitution.~~

Subchapter 9: Personnel

Subchapter 9: Department of Assessment/Real Estate Appraisal

§ 117-501. Creation of Department

Commented [GD6]: Align section numbers

There shall be established a Department of Real Estate Appraisal headed by a professionally qualified real estate appraiser, who shall be appointed by the Manager with the approval of the Selectboard.

§ 117-505. Purpose

The purpose of the Department of Real Estate Appraisal is to provide for appointment of a qualified real estate assessor rather than the election of listers. The Town shall be governed by, and each taxpayer shall have rights granted by the applicable statutes concerning real and personal property taxation, appeal therefrom, and other statutes concerning taxation.

§ 117-502. Appraisal of property

The Department of Real Estate Appraisal shall appraise all real and business personal property for the purpose of establishing the grand list. Appraisals shall be reviewed periodically and kept up to date. Technically qualified individuals or firms may be employed as needed.

§ 117-503. Appraisal of business personal property for tax purposes

Appraisal of business personal property shall be in accordance with the provisions of 32 V.S.A. § 3618, as the same may from time to time be amended provided that all business personal property acquired by a taxpayer after September 30, 1995 shall be exempt from tax.

§ 117-504. Duties of Department

The duties and powers of the Department of Real Estate Appraisal shall be the same as those established for listers under the general statutes.

§ 117-901. Appointment and removal

All Town employees not elected by the voters shall be appointed, supervised, and removed by the Town Manager unless otherwise specified by this charter. There shall be no discrimination in employment on account of race, religion, sex, or political opinions. Appointments, lay-offs, suspensions, promotions, demotions, and removals shall be made primarily on the basis of training, experience, fitness, and performance of duties, in such manner as to insure that the responsible administrative officer may secure efficient service.

§ 117-902. Personnel rules and regulations

(a) The Town Manager or the Town Manager's appointee shall be the Personnel Director. The Town Manager shall maintain personnel rules and regulations protecting the interests of the Town and of the employees. These rules and regulations must be approved by the Selectboard and shall include the procedure for amending them and for placing them into practice. Each employee shall receive a copy of the rules and regulations when he or she is hired.

(b) The rules and regulations may deal with the following subjects or with other similar matters of personnel administration: job classification, jobs to be filled, tenure, retirement, pensions, leaves of absence, vacations, holidays, hours and days of work, group insurance, salary plans, rules governing hiring, temporary appointments, lay-off, reinstatement, promotion, transfer, demotion, settlement of disputes, dismissal, probationary periods, permanent or continuing status, in-service training, injury, employee records, and further regulations concerning the hearing of appeals.

§ 117-903. Prohibitions

No person in the service of the Town shall either directly or indirectly give, render, pay, or receive any service or other valuable thing for or on account of or in connection with any appointment, proposed appointment, promotion, or proposed promotion.

Subchapter 10: Amendment Of Charter

§ 117-1001. Laws governing

This charter may be amended in accordance with the procedure provided for by law for amendment of municipal charters.

Subchapter 11: Severability

§ 117-1101. Severability

The provisions of this charter are declared to be severable. If any provisions of this charter are for any reason invalid, such invalidity shall not affect the remaining provisions that can be given effect without the invalid provision.

Fees Authority Proposal

Resources considered:

Charters: South Burlington, Berlin, Williston, Springfield, St. Albans

Recommended by town staff

Proposed Language:

§ 117-106. Ordinances- Method of adoption and enforcement

(a) Ordinance-making authority granted to the Town by this charter and general law shall be exercised pursuant to the provisions of Subchapter 3 of this charter.

(b) The Town of Essex may adopt, amend, enforce, and repeal ordinances relating to any aspect of municipal concern for the peace, order, health, safety, comfort, protection, and general welfare of the Town and of its citizens.

(c) In addition to powers otherwise conferred upon it by law and this charter, the Town is authorized to adopt and enforce ordinances for the purpose of regulating, licensing, and fixing reasonable and necessary license fees for the following:

- (1) places of public resort, accommodation, assemblage, or amusement, whether indoor or outdoor;
- (2) places dispensing food and drink to the public, such as restaurants, bars, or inns;
- (3) theaters;
- (4) displays of fireworks;
- (5) public dances and musical performances;
- (6) itinerant vendors;
- (7) the exclusive occupancy of any specified portion of a public street or right-of-way;
- (8) the keeping of dogs or other pets;
- (9) other activities that the Town has the power to regulate or license by virtue of general law or this charter.

Just Cause Proposal

Resources considered: language from and discussion with Tom Proctor, public comment

Recommended by Rights and Democracy (Tom Proctor), public

Proposed language (from Rights and Democracy)

§ 117-107. Just Cause Eviction

The Selectboard shall have the power:

(a) To provide by ordinance protections for residential tenants, as defined in Chapter 137 of Title 9 of the Vermont Statutes Annotated, from eviction without ‘just cause,’ where just cause shall include, but is not limited to:

- (1) a tenant’s material breach of a written rental agreement;
- (2) a tenant’s violation of state statutes regulating tenant obligations in residential rental agreements;
- (3) non-payment of rent; and
- (4) a tenant’s failure to accept written, reasonable, good faith renewal terms.

(b) Such ordinance shall exclude from ‘just cause’ the expiration of a rental agreement as sole grounds for termination of tenancy. In addition to the exemptions in Chapter 137 of Title 9, the ordinance shall exempt from this provision, subject to mitigation provisions, sublets and in-unit rentals as well as the following properties but not limited to:

- (1) owner-occupied duplexes, and triplexes;
- (2) those being withdrawn from the rental market, including properties to be occupied by the owner or an immediate family member as a primary residence; and
- (3) those in need of substantial renovations which preclude occupancy.

(c) Such ordinance shall include provisions that:

- (1) mitigate potential negative impacts on tenants and property owners, including but not limited to requirements of adequate notice and reasonable relocation expenses;
- (2) provide for a reasonable probationary period after initial occupancy; and
- (3) limit unreasonable rent increases to prevent de facto evictions or non-renewals, although this shall not be construed to limit rents beyond the purpose of preventing individual evictions.

(d) The ordinance shall define what is ‘reasonable’ and ‘adequate notice’ in defining just cause and shall require that landlords provide notice of just cause and other legal requirements as part of the rental agreement.

Recall Proposal

Resources Considered

- Constituent Brad Kennison recommendation
- Charters considered:
 - Bennington
 - Brattleboro
 - Colchester
 - Hardwick
 - Middlebury
 - Milton
 - Poultney
 - Springfield
 - St. Albans
 - St. Johnsbury
 - Stowe
 - Underhill
 - Westford
 - Windsor

Recommended by constituent

Proposed Language

§ 117-205. Recall of Selectboard Members

(a) A petition signed by fifteen percent of the registered voters of the municipality, based upon the total number of registered voters at the last preceding municipal election, demanding the recall of the Selectboard member or members cited in the petition shall be filed with the Board of Civil Authority. The allowable grounds for removal are misconduct, malfeasance, nonfeasance, crimes in office, gross incompetency, corruption, or theft. The petition shall contain a specific statement of the grounds on which removal is sought. Disagreements with decisions made by the Selectboard on policy issues shall not be grounds for recall.

(b) The Board of Civil Authority shall certify if the aforementioned grounds for removal have been met. The approval or rejection of such a petition shall be preceded by a public meeting held by the Board of Civil Authority at which time testimony is taken in support of or opposition to the petition. The Selectboard member or members named in the recall petition shall not sit as a member of the Board of Civil Authority for the purpose of this hearing and certification vote.

(c) If the Board of Civil Authority certifies that the petition meets the grounds for dismissal, that Board shall refer the petition to the Selectboard, which shall call for a public vote on the petition.

(d) The Selectboard member shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of that number vote for removal. The

Selectboard member or members shall be removed from office immediately and the Selectboard shall then name a successor in accordance with the replacement provisions of this charter.

Development Review Board Proposal

Resources Considered: Merger Charter

Recommended by public, committee members, town staff

Proposed language:

§ 117-209. Appointments by Selectboard

(a) The Selectboard shall appoint the members of the following permanent commissions and positions:

(1) Development Review Board (will replace the Zoning Board on of Adjustment on or before July 1, 2024; members shall be appointed on or before but no later than July 1, 2024);

(2) Zoning Board of Adjustment (will be replaced by Development Review Board on or before but not later than July 1, 2024. All appointed terms shall end when the the Zoning Board of Adjustment terminates);

(3) Planning Commission;

(4) Commission on Public Safety;

(5) Cemetery Commission;

(6) Town Attorney;

(7) Town Manager; and

(8) Energy Coordinator.

(b) The Selectboard may appoint such additional commissions and committees as they feel to be in the best interest of the Town and all other appointive or elective officers authorized by statute.

(c) The terms of all appointments shall commence on the day after the day of appointment unless the appointment is to fill a vacancy in an office, in which case the term shall commence at the time of appointment.

§ 117-802. Development Review Board

A Development Review Board shall be established and its powers, obligations, and operation shall be under and in accordance with Vermont Statutes Annotated, as they may be amended from time to time hereafter. The Development Review Board shall consist of five regular members and alternate members as necessary, appointed by the Town Selectboard in accordance with 24 V.S.A. § 4460, as may be amended from time to time.

§ 117-803. Energy-Related Issues

The Selectboard shall appoint an individual to serve as an energy coordinator to advise the Planning Commission and the Development Review Board on energy-related considerations in accordance with and given such responsibilities as described in 24 V.S.A. § 1131, as may be amended from time to time.

§ 117-804 – Transition Provisions

The Planning Commission and the Development Review Board as described in § 117-801 and § 117-802 shall take effect within one year after enactment of this Charter or July 1, 2024, whichever date is earlier. All terms for members of the existing Planning Commission and Zoning Board of Appeals shall end upon the creation of the new Planning Commission and Development Review Board as described above.

Just Cause Eviction clause proposed for Charter Essex Housing Commissioners' feedback

Emily Taylor

I think Vermont Tenants should be consulted on this. Essex would need more staff to take these concerns, follow up, deal with mitigating negative impacts, helping relocate, etc. The language needs to be more specific as well to outline exactly what services the Selectboard would be offering as protections and they should fill gaps that other agencies can't provide. The language in this is very vague and so it feels rushed to have a formal decision on it without knowing specifics by January 3.

I'm in favor of the protections but not in favor to move it forward by 1/3 without making more detailed recommendations.

Ned Daly

I have read the Just Cause Eviction proposal.

My initial reaction is either "Who doesn't love Mom's apple pie?" and the "devil is in the Details."

Looking at Article (b) - What happens if a lease expires and there is no agreement going forward on rent? What do they mean by "mitigation provisions"? This would definitely need to be clarified.

Article (c) - Need to clarify "reasonable relocation expenses" as a start, as well as what is covered in a "reasonable probationary period". part(3) (C) needs a lot of definition.

Article (d) I agree. Somewhere in this proposed action there should be clarification re: security deposits. A common occurrence when someone plans to leave a rental is to not pay the final month's rent thus negating part of the intent of the security deposit which the owner could intend to use to reclaim costs due to damages, etc.

I am also not clear as to who may adjudicate the enforcement of the act. I would hate to think the Selectboard would be the final arbiter of such instances. If they were, there is a chance nothing else would get done..

Short notice at a busy time, but these are some initial thoughts.

Happy to discuss any time.

RECOMMENDATION TO
TOWN OF ESSEX
PROPOSED CHARTER AMENDMENT
“RECALL OF ELECTED OFFICIALS”
December 13, 2022

Submitted by
Bradley J. Kennison

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

Article 7 of the Constitution of the State of Vermont

Overview

At the December 06,2021 Selectboard meeting I presented a proposal to amend the Town Charter by adding a recall of elected Town Officer(s) (Exhibit A). The purpose was to work collaboratively with the Selectboard rather than force the issue by petition.

The Selectboard took this under advisement and suggested forming a Charter Committee to not only review this proposal but to review the entire Town Charter and suggest amendments after having separated from the Village.

At the October 04,2022 Charter Committee meeting I presented a similar but revised proposal for their consideration in amending the Town Charter (Exhibit B).

History

Of Vermont's 251 Cities and Towns, approximately 80 have Charter's and fifteen with recall language. Over Vermont's long history the recall provision has only been used twice. It was first used in Windsor in 2003 and Underhill in 2021. The recall provision for all fifteen Town's is attached as (Exhibit C). Keep in mind that language in some of these recall provisions are more than a decade old and don't reflect the ability to easily track challenge voters and changes to statute.

The language in the proposed Essex recall provision was drafted after careful review of all fifteen charters, speaking with Town Clerks in each Town with a recall provision, conversation with SOS office, analyzing the recall process in Windsor and Underhill and listening to Govt Ops Committee hearings on the Underhill charter submission.

The recall language and vote tally for Windsor is presented in (Exhibit D). The first threshold of 15% of registered voters was met to place the recall vote on the ballot. The second threshold of at least one-third of registered voters (1,000) was not met even though 77% voted in favor of recall (<700 votes were cast). In this case the recall effort failed when only 23% of registered voters cast ballots.

In the case of Underhill (Exhibit E) the first threshold of 15% of registered voters was met to place the recall vote on the ballot. According to the Town Clerk it required nearly two months to gather those signatures. The second threshold was a simple majority of votes cast. The final tally was (96%) or 570 in favor of recall and 23 opposed. Just as occurred in Windsor, only 23% of the registered voters cast ballots.

In both Windsor and Underhill, voters overwhelmingly favored recall but with low voter turnout. Town Clerk's I spoke with confirmed single-issue or special elections invariably have low voter turnout versus a general election with multiple issues on the ballot which attract a greater number of voters.

Essex Town currently has 8,981 registered voters and of that number 728 (8.1%) are challenge voters* - leaving 8,116 active registered voters (Exhibit F). What is the difference?

- Challenge* voters – most are voters on the checklist that have moved and not verified their new address. When the Town Clerk receives a Vt. Property Tax return, they send out a request to the seller to verify their new residency. If there is no response the voter must be kept on the voter checklist for two election cycles or four years, by statute.
- Ballots mailed by the Secretary of State office for the latest November election were mailed to active registered voters only. This change became effective June 07,2021 as per statute 17 VSA § 2537a.
- Challenge voters did not receive a ballot as they are not eligible to vote until address verification.
- In the November election only six challenge voters from Essex completed an Affirmation of Residency/Domicile and were allowed to vote. This is affirmation that very few challenge voters would be available to sign a petition for recall and further evidence that the registered voter metric is not useful for a recall provision.

Essex Recall Proposal Presentation To The Charter Committee

The first threshold in the Essex proposed recall (Exhibit B) is 15% of active registered voters or 1,347 petition signatures. To put that into context a petition to place an article on the ballot bypassing the Selectboard, would only require 5% or 449 of registered voter signatures.

A case in point, was the merger revote where the petition only required 5% or ~ 850 signatures of voters in both the Town and Village with a voter checklist that exceeded 16,000 at that time.

The second threshold is a simple majority of votes cast. It isn't tied to the number of voters that cast ballots in a previous election or a percentage of voters on the checklist. This is a new election and should reflect the will of the electorate given the facts known at the time. In the case of the 2021 Selectboard election, Tracy Delphia defeated Elaine Haney by 2 votes after the recount. Simple majority prevailed! When the Selectboard votes on an issue simple majority rules. There should not be a double standard or two-tiered system of justice.

In the case of the merger, 7,785 votes were cast ~ 47% in the first vote and 8,539 in the second ~ 52%. In both cases the initiative failed by simple majority. Generally speaking, annual elections have multiple issues and candidates, which draw a greater number of voters, especially when there is a hot button issue like the merger. A single-issue special election would most likely attract far less attention and fewer voters as occurred in both the Windsor and Underhill elections. That is reason to consider a simple majority. (e.g., One third of registered voters in Essex would = 2,960. If Essex had a 23% turnout that would = 1,867).

I believe the proposed language and thresholds strike the right balance. It would require a significant effort by the petitioner to obtain needed signatures and the cause for recall would need to be egregious enough for voters to overwhelmingly vote for recall.

Vermont Legislature

S181

During the last legislative session Senator Jeanette White, Chair of the Senate Government Operations Committee, submitted bill S181 (Exhibit G) which included the "Recall of Elected Officials". Senator White had served twenty years in the Vermont legislature with extensive experience in state and municipal government.

In this bill the first threshold for a voter-initiated petition is to obtain the signatures of not less than 15% of active registered voters. The other important threshold calls for the removal of an elected official when the majority of votes cast at a special or annual meeting vote in favor of recall.

Charter Committee Proposal

The Charter Committee's proposal for Recall of Selectboard Members – §117-205 is attached as (Exhibit H).

This proposal does not remotely represent the initial proposal to the Selectboard or to the Charter Committee. Rather, it presents a complicated petition restriction of 15% of registered voters from the preceding municipal election.

At any given time, the number of registered, active registered or challenge voters is obtainable from the Town Clerk. Using registered voters instead of active registered voters is no longer a useful metric as most challenge voters are not available for petition signature.

To complicate the process further the committee has sited specific grounds for removal of an elected official. The allowable grounds for removal are misconduct, malfeasance, nonfeasance, crimes in office, gross incompetency, corruption, or theft. Citing specific grounds for removal eliminates all other unforeseen reasons for recall. If an elected official was charged, it would be highly likely that a defense attorney would argue his client's actions do not fall under the specific allowable grounds.

The proposal names the Board of Civil Authority (BCA) as the arbiter to decide if a petitioner's reason for recall meets allowable grounds. This defeats the entire purpose as it takes away the people's voice. If democracy is government of the people, by the people and for the people than let the electorate decide if a municipal officer has breached the public trust. After all, they were the one's who elected the official in the first place. They should have the right of recall without further government bureaucracy deciding whether their claims are just.

The proposal further states, the Selectboard member shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of that number vote for removal.

A Selectboard member elected at an annual meeting or general election draws a greater number of voters due to multiple issues on the ballot. As mentioned previously, all Town Clerks I spoke with confirmed that voter turnout in special elections is much lower than general elections. As evidence of this, look at the turnout for the recall in Windsor and Underhill where only 23% of the voters cast ballots. And to be sure that any recall fails the committee specifies that one third or ~ 2,960 of the registered voters of the Town vote.

Board of Civil Authority (BCA)

The **Board of Civil Authority** is a quasi-judicial 21-member board consisting of fifteen Justices of the Peace, the Selectboard members (five) and the Town Clerk. The Board's duties are serving as an election official and assisting on Election Day and sitting on tax appeals and serving as a member of the board of tax abatement.

The five members of the Selectboard that sit on the BCA are **Andy Watts, Tracey Delphia, Dawn Hill-Fleury, Kendall Chamberlain, and Ethan Lawrence.**

Members of the Charter Committee that sit on the (BCA) are **Dawn Hill-Fleury, Alex Dubief, and Bruce Post.** Dawn Hill-Fleury sits as Chair of BCA.

By statute and case law the Selectboard has no authority to recall or remove any of its members. By sitting on the BCA, they now have a vote to determine if a recall petition should be approved against one of its own.

Furthermore, three of the Charter Committee members that were instrumental in writing this proposal are also members of the BCA.

This level of centralized power should alarm every resident of Essex Town. It removes the voice of the people and is replaced by a quasi-judicial board to decide the validity of a petition and if it rises to their interpretation of allowed grounds.

Vermont League of Cities and Towns (VLCT)

CHAPTER 3 – CONFLICTS OF INTEREST AND INCOMPATIBLE OFFICES

- A. INTRODUCTION - The proper operation of democratic government requires that public officials be independent, impartial, and responsible to the people; that government decisions and policy be made in proper channels of government structure; that public office not be used for personal gain and that the public have confidence in the integrity of its government.
- B. They should take appropriate steps to minimize their own conflicts not only for their own protection and protection of other local officials, but to uphold the public's faith in their local government.

TOWN of ESSEX CHARTER

Recall Provision

The voters of the Town may recall any elected Town officer(s) subject to the following conditions and procedures.

- (a) A recall petition, clearly stating the name, office held and cause for recall, signed by not less than 10 percent of the registered voters of the Municipality, bearing their printed name, signature and street address, shall be filed with the Town Clerk. The Town Clerk upon receipt of a valid petition shall, within 60 days, hold a special election with voting by Australian ballot to consider whether the elected officer(s) shall be removed from office.
- (b) If the special election falls within 60 days of an annual election, such special election may coincide with the annual election.
- (c) The informational meeting and special election shall be warned as provided by the general laws of the State of Vermont.
- (d) The named elected Town officer(s) shall be removed if at least two-thirds majority cast their vote for recall. The office shall be deemed vacant when the votes are certified.
- (e) A vacancy resulting from the recall of an official shall be filled in the manner prescribed by law to fill the vacancy until the next annual meeting.
- (f) A recall petition shall not be brought against an individual more than once within a twelve-month period.

TOWN of ESSEX CHARTER

Recall Provision – Charter Committee

October 04, 2022

The voters of the Town may recall any elected Town or Town School District officer(s) subject to the following conditions and procedures.

- (a) A recall petition, clearly stating the name, office held and cause for recall, signed by not less than 15 percent of the active registered voters of the Municipality, bearing their printed name, signature, and street address, shall be filed with the Town Clerk. The Town Clerk upon receipt of a valid petition shall, within 60 days, hold a special election with voting by Australian ballot to consider whether the elected officer(s) shall be removed from office.
- (b) If the special election falls within 60 days of an annual election, such special election may coincide with the annual election.
- (c) The informational meeting and special election shall be warned as provided by the general laws of the State of Vermont.
- (d) The named elected Town officer(s) shall be removed when the petition is approved by a majority of ballots cast for recall. The office shall be deemed vacant when the votes are certified.
- (e) A vacancy resulting from the recall of an official shall be filled in the manner prescribed by law to fill the vacancy until the next annual meeting.
- (f) A recall petition shall not be brought against an individual more than once within a twelve-month period.

Chapter 103 : " Town of Bennington

Subchapter 001 : Powers Of The Town

(Cite as: 24 App. V.S.A. ch. 103, § 104)

- § 103-104. Recall

(a) The voters of the Town may recall any of the elected Town officers listed in subchapter 2 of this charter.

(b) A recall petition, clearly stating cause, signed by at least 30 percent of the legal voters of the Town, and bearing their addresses, shall be filed with the Select Board within 15 calendar days of its issue. The Select Board upon receipt of a valid petition shall, after 60 calendar days, hold a special election, with voting by Australian Ballot, to consider the recall of an elected Town officer. When such a petition is approved by a majority of two-thirds of the ballots cast at such special election, the officer named in the petition shall thereupon cease to hold his/her office, and the office shall be considered vacant until filled by a special election to be held within 60 days.

(c) A recall petition shall not be brought against an individual more than once during his/her term of office.

Chapter 107 : Town Of Brattleboro

Subchapter 003 : Powers Of The People

(Cite as: 24 App. V.S.A. ch. 107, § 3.05)

§ 107-3.5. Recall

(a) The voters of the Town may recall any of the elected Town or Town School District officers listed in subchapter 2, section 2.1 of this charter.

(b) A recall petition, signed by at least 25 percent of the legal voters of the Town, and bearing their addresses, shall be filed with the Town Clerk within 15 calendar days of its issue. The Town Clerk upon receipt of a valid petition shall, between 45 and 60 calendar days, hold a special election with voting by Australian ballot to consider the recall of an elected Town officer.

(c) When such a petition is approved by a majority of the ballots cast at such special election, the Town officer named in the petition shall thereupon cease to hold the office.

(d) A vacancy resulting from the recall of an officer shall be filled in the manner prescribed by law.

(e) A recall petition shall not be brought against an individual more than once within 12 months.

(Amended 2011, No. M-10 (Adj. Sess.), § 2, eff. April 27, 2012.)

Chapter 113 : Town Of Colchester

Subchapter 002 : Officers

(Cite as: 24 App. V.S.A. ch. 113, § 203)

§ 113-203. Recall

(a) Any officer elected under section 202 of this chapter may be removed from office as follows: A petition signed by not less than 15 percent of the registered voters shall be filed with the Selectboard, requesting a vote on whether the elected officer shall be removed from office. The Selectboard shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The official shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of that number vote for removal.

(b) If the Town votes for removal of an elected officer, the office shall thereupon become vacant, and the Selectboard shall call a special meeting, to be held within 45 days of the vote for removal, to fill the vacancy until the term of the officer so removed expires. (Amended 2015, No. M-1, § 2, eff. Jan. 27, 2015.)

Chapter 123 : Town Of Hardwick

Subchapter 003 : Officers

(Cite as: 24 App. V.S.A. ch. 123, § 311)

§ 123-311. Recall of elected officials

(a) Any elected Town officer may be removed from office as follows:

A petition signed by not less than 25 percent of the registered voters shall be filed with the selectmen, requesting a vote on whether the elected officer shall be removed from office. The date of signing by each voter shall be indicated in the petition and such date shall not be earlier than 30 days prior to the filing of the petition. The selectmen shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected town officer shall be removed. The officer shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of the number of votes is cast for removal. Notwithstanding any other provision of law or of this charter to the contrary, any vote on a recall petition shall be by the Australian ballot system.

(b) If the Town votes for removal of an elected officer, the office shall thereupon become vacant, and the selectmen shall call a special meeting, to be held within 45 days of the vote for removal, to fill the vacancy until the term of the officer so removed expires. The office shall remain vacant until the next annual Town meeting if such special meeting would fall within 75 days prior to the annual Town meeting.

Chapter 127 : Town Of Middlebury

Subchapter 003 : Officers

(Cite as: 24 App. V.S.A. ch. 127, § 307)

§ 127-307. Recall

(a) Any officer elected under subsection 302(a) of this charter may be removed from office as follows:

A petition signed by not less than 15 percent of the registered voters shall be filed with the selectmen, requesting a vote on whether the elected officer shall be removed from office. The selectmen shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The official shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of that number vote for removal.

(b) If the Town votes for removal of an elected officer, the office shall thereupon become vacant, and the selectmen shall call a special meeting, to be held within 45 days of the vote for removal, to fill the vacancy until the term of the officer so removed expires.

(c) The votes for removal and to fill the office removed shall be by Australian ballot.

Chapter 129 : Town Of Milton

Subchapter 007 : Officials' Conduct

(Cite as: 24 App. V.S.A. ch. 129, § 702)

• § 129-702. Charter Compliance Committee

(a) A Charter Compliance Committee of three members shall be created to hear allegations from the general public or citizens who feel an elected or appointed board or commission or an elected or appointed official has, unknowingly, violated the charter. The general public or citizen must first give the elected or appointed board or commission or the elected or appointed official an opportunity to correct the alleged violation.

(b) The Town Manager and the Superintendent of Schools shall be exempt from this section. A violation of the charter by the Town Manager will be brought to the attention of the Selectboard. A violation by the Superintendent will be brought to the attention of the School Board. If the violation is not corrected in a timely manner, the general public or citizen may take action against the appropriate board.

(c) Biannually, the elected justices of the peace for the Town of Milton will elect three of its members to the Charter Compliance Committee.

(d) The Charter Compliance Committee shall meet within 10 days of a complaint received in writing by the Town Clerk. If the complaint is against the Town Clerk's office, the complaint shall be filed with the Clerk of the Selectboard.

(e) The Charter Compliance Committee shall act judiciously in a quasi-judicial capacity. The board, the commission, or the official must be given certain due process protection, including due notice, an opportunity to be heard, and a right to insist that the justices hear the evidence before coming to any conclusion about the nature of the complaint.

(f) After hearing all parties and reviewing the evidence presented, the Charter Compliance Committee shall issue its facts and findings in a timely manner.

(g) The Charter Compliance Committee shall verify the validity of the allegation. If it is found that a violation of the charter has occurred, the Committee shall publicly notify the board or commission or public official.

(h) The board, commission, or public official should have an opportunity to correct the violation in a timely manner, not to exceed 60 days.

(i) If the board, commission, or public official does not correct the violation in a timely manner, the Charter Compliance Committee shall award one of the following:

(1) Reprimand (official, board, or commission will be told to abide by the charter).

(2) Public sanction (Public will be made aware of the violation along with the facts and findings).

(j) Any officer elected under section 202 of this charter may be removed from office as follows: A legal petition stating specific cause as cited by the petitioner signed by not less than 15 percent of the registered voters shall be filed with the Town Clerk requesting a vote on whether the elected official shall be removed from the office. The Selectboard in the case of the Town and the School Board in the case of the School shall call a Special Town or School Meeting to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The officer shall be removed only if at least one-third of the registered voters of the Town vote and a majority of that number vote for removal.

Chapter 133 : Town Of Poultney

Subchapter 001 : Incorporation And Grant Of Powers

(Cite as: 24 App. V.S.A. ch. 133, § 103)

§ 133-103. Recall

Any elected official or official appointed to elective office holding a Town office may be recalled by the following process:

(1) A petition signed by not less than 35 percent of the number of registered voters voting in the last annual Town meeting shall be filed with the Town Clerk.

(2) The petition shall request a special Town meeting for the purpose of recalling a specific person or persons and shall state the office that they hold.

(3) The selectmen shall act upon the petition within seven days by warning a special Town meeting.

(4) The Town meeting shall be held not less than 30 days and not more than 40 days from the date of the receipt of the petition.

(5) The special Town meeting shall be warned as provided by the general law of this State.

(6) At least four days but not more than 15 days prior to the voting, an informational meeting shall be held at which time both the elected official and the proponents for the recall shall have the opportunity to discuss the issue of recall. The informational meeting shall be warned in conjunction with the warning for the special Town meeting.

(7) Voting on the issue of recall shall be by Australian ballot. A majority of the legal votes cast shall be needed to effect a recall of that official.

Chapter 149 : Town Of Springfield

Subchapter 002 : Elections And Local Officials

(Cite as: 24 App. V.S.A. ch. 149, § 23)

• § 149-23. Local elected officials

(4) Recall of elected officials:

(A) Any elected official may be removed from office as follows: A petition signed by not less than 15 percent of the registered voters shall be filed with the selectmen, requesting a vote on whether the elected officer shall be removed from office. The date of signing by each voter shall be indicated in the petition and such date shall not be earlier than 30 days prior to the filing of the petition. The selectmen shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The official shall be

removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of the number of votes is cast for removal.

(B) If the Town votes for removal of an elected officer, the office shall thereupon become vacant, and the selectmen shall call a special meeting, to be held within 45 days of the vote for removal, to fill the vacancy until the term of the officer so removed expires. The office shall remain vacant until the next annual Town meeting if such special meeting would fall within 75 days prior to the annual Town meeting.

Chapter 150 : Town Of St. Albans

(Cite as: 24 App. V.S.A. ch. 150, § 5)

§ 150-5. Recall

Any elected officer of the Town may be recalled from office as follows:

(1) A petition signed by not less than 15 percent of the registered voters shall be filed with the Selectboard requesting a vote on whether the elected officer shall be removed from office.

(2) The Selectboard shall call a special Town meeting to be held within 45 days of receiving the petition to vote on whether the elected officer shall be removed.

(3) The vote shall be by Australian ballot.

(4) The official shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of that number vote for removal.

(5) If the Town votes for removal of an elected officer, the office shall thereupon become vacant and the Selectboard shall call a special meeting to be held within 45 days of the vote for removal to fill the vacancy until the term of the officer so removed expires. (Added 2013, No. M-3, § 2, eff. May 14, 2013.)

Chapter 149 : Town Of Springfield

Subchapter 002 : Elections And Local Officials

(Cite as: 24 App. V.S.A. ch. 149, § 23)

- § 149-23. Local elected officials

(4) Recall of elected officials:

(A) Any elected official may be removed from office as follows: A petition signed by not less than 15 percent of the registered voters shall be filed with the selectmen, requesting a vote on whether the elected officer shall be removed from

office. The date of signing by each voter shall be indicated in the petition and such date shall not be earlier than 30 days prior to the filing of the petition. The selectmen shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The official shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of the number of votes is cast for removal.

(B) If the Town votes for removal of an elected officer, the office shall thereupon become vacant, and the selectmen shall call a special meeting, to be held within 45 days of the vote for removal, to fill the vacancy until the term of the officer so removed expires. The office shall remain vacant until the next annual Town meeting if such special meeting would fall within 75 days prior to the annual Town meeting.

Chapter 151 : Town Of St. Johnsbury

(Cite as: 24 App. V.S.A. ch. 151, § 21)

§ 151-21. Recall

Any Town officer, as defined by 17 V.S.A. § 2646, may be recalled by the following process:

(1) A petition shall be filed with the Town Clerk signed by not less than twenty-five percent of the number of registered voters at the time the petition is submitted.

(2) The petition shall request a meeting of the voters of the Town for the purpose of recalling a Town officer and shall set forth the name of the person to be recalled, the reason for the recall, and shall identify the office he or she holds.

(3) The Selectboard shall, within 15 days of receipt of such petition, warn a meeting to act upon the petition.

(4) The meeting shall be held not less than 30 nor more than 40 days from the date of the warning.

(5) The meeting shall be warned as provided by the general laws of the State of Vermont.

(6) At least four days, but not more than 15 days, prior to the meeting, an informational meeting shall be held at which time both the Town officer who is the subject of the recall petition and the proponents of the recall shall have the opportunity to discuss the petition to recall. The informational meeting shall be warned in conjunction with the warning for the meeting.

(7) When a two-thirds majority of the voters present and voting on the question at such meeting vote in favor of the recall, the Town officer subject to the petition shall be recalled and the office he or she held shall be deemed vacant.

(8) A recall petition shall not be brought against the same officer more than once within any 12-month period. (Added 2015, No. M-3, § 2, eff. Mar. 12, 2015.)

Chapter 153 : Town Of Stowe

Subchapter 004 : Officers

(Cite as: 24 App. V.S.A. ch. 153, § 401)

- **§ 153-401. Officers generally; elected officers; recall**

(a) The elected officers of the Town of Stowe shall be: Selectboard members, Moderator, and listers. These officers shall have all the powers and authority necessary to carry out their duties and responsibilities under this charter and the laws of the State of Vermont.

(b) Elected Town officers may be removed from office as follows:

(1) A petition signed by not less than 30 percent of the registered voters of the Town shall be filed with the Selectboard requesting a vote on whether one or more elected officer shall be removed from office before the expiration of the officer's term. The date of signing by each voter shall be indicated in the petition, and the date shall not be earlier than 30 days prior to the filing of the petition.

(2) If the petition, as filed, meets the requirements of subdivision (1) of this subsection, the Selectboard shall call a special Town meeting, to be held within 45 days of the filing of the petition, to vote on whether the named elected Town officer shall be removed.

(3) The named elected Town officer shall be removed only if at least as many registered voters of the Town vote as voted in the election at which the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of the number of votes is cast for removal.

(4) Notwithstanding any other provision of law to the contrary, a vote on a recall petition shall be by Australian ballot.

(c) A vacancy resulting from the recall of an elected Town officer shall be filled in the manner prescribed by law.

(d) A recall petition shall not be brought against a particular named individual more than once within any 12-month period. (Amended 2001, No. M-7, § 2, eff. May 21, 2001; 2009, No. M-18 (Adj. Sess.), § 2, eff. May 5, 2010; 2013, No. M-4, § 2, eff. May 8, 2013.)

Chapter 155 : Town Of Underhill

Subchapter 006 : Recall Of Elected Town Officers

(Cite as: 24 App. V.S.A. ch. 155, § 61)

- **§ 155-61. Recall of elected town officers**

Any elected Town officer may be removed from office subject to the following conditions and procedures:

(1) A written petition that is signed by not less than 15 percent of the registered voters of the Town seeking the removal of the Town officer or officers and

requesting a vote of the Town at a regular or special Town meeting called for that purpose shall be filed with the Town Clerk.

(2) The Selectboard shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The vote shall be held by Australian ballot.

(3) When the petition is approved by a majority of the ballots cast at the special Town meeting, the Town officer named in the petition shall cease to hold the office.

(4) A vacancy resulting from the recall of an officer shall be filled in the manner prescribed by law.

(5) A recall petition shall not be brought against an individual more than once within 12 months. (Added 2021, No. M-3, § 2, eff. June 1, 2021.)

Chapter 155C : Town Of Westford

(Cite as: 24 App. V.S.A. ch. 155C, § 5)

- **§ 155C-5. Removal of elected Town officers**

Any elected Town officer may be removed from office in the following manner:

(1) A petition must be filed with the Town Clerk seeking the removal of the elected Town officer or officers. The petition must be signed by at least 15 percent of registered voters.

(2) Within 15 days after receipt of the petition, the Selectboard shall warn a special Town meeting, or if the annual meeting is to occur within 90 days of the filing of the petition, the Selectboard shall include an article in the warning for the annual meeting, for the purpose of voting by Australian ballot on whether the officer or officers shall be removed from office.

(3) Removal shall only occur if a majority of the votes cast at the annual or special town meeting approve removal and the total of all votes cast on the removal question equals or exceeds the total of all votes that were cast to elect the officer.

(4) If an officer is removed, the officer shall immediately cease to hold office and the office shall become vacant. The vacancy shall be filled as provided by law.

(5) Only one petition for removal may be filed against any given elected officer during any 12-month period of his or her term of office. (Added 2013, No. M-20 (Adj. Sess.), § 3, eff. June 3, 2014.)

Chapter 157 : Town Of Windsor

Subchapter 003 : Elected Officers

(Cite as: 24 App. V.S.A. ch. 157, § 11)

- § 157-11. Elected officers

(a) The following officers shall be elected by the voters of the Town of Windsor, and voting for all such officers shall be by Australian ballot:

- (1) five Selectboard members;
- (2) one Town Clerk;
- (3) one Town Treasurer;
- (4) one Moderator;
- (5) three listers;
- (6) [Repealed.]
- (7) three trustees of public funds.

(b) Only a voter of the Town of Windsor may seek election to or hold a Town elected office.

(c) Any officer elected under this charter may be removed from office as follows: A petition signed by not less than 15 percent of the registered voters shall be filed with the Selectboard requesting a vote on whether the elected officer shall be removed from office. The Selectboard shall call a special Town meeting to vote by Australian ballot on whether the elected officer shall be removed. The official shall be removed only if at least one-third of the registered voters of the Town vote, and a majority of those voting vote for removal. If the Town voters vote for removal of an elected officer, the office shall thereupon become vacant. The Selectboard shall call a special Town meeting to fill the vacancy until the term of the officer so removed expires. The votes for removal and to fill the vacancy shall be by Australian ballot. The Selectboard may fill such vacancy by appointment until a new member is duly elected.

(d) The vote to fill any vacancy shall be by Australian ballot. The Selectboard, or its remaining members, may fill any vacancy by appointment until a new member is duly elected. If only one member remains, that Selectboard member may sign the orders.

(e) A member of the Selectboard shall not be a lister or an employee of the Town. A Town administrator shall not hold any elected office in the Town government. (Amended 1999, No. M-12 (Adj. Sess.), § 5, May 9, 2000; 2005, No. M-13 (Adj. Sess.), § 5, eff. May 17, 2006; 2011, No. M-18 (Adj. Sess.), § 2, eff. May 9, 2012.)

Chapter 162 : Town Of Woodford

(Cite as: 24 App. V.S.A. ch. 162, § 10)

- **§ 162-10. Recall of elected officials**

(a) Any elected official may be removed from office for just cause as follows: A petition signed by not less than 30 percent of the registered voters shall be filed with the Selectboard requesting a vote on whether the elected officer shall be removed from office. The date of signing by each voter shall be indicated in the petition and such date shall not be earlier than 30 days prior to the filing of the petition. The Selectboard shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected official shall be removed. The official shall be removed if at least one-third of the registered voters of the Town vote and two-thirds of the number of votes is cast for removal.

(b) If the Town votes for removal of an elected officer, the office shall thereupon become vacant and the Selectboard shall call a special meeting, to be held within 45 days of the vote for removal, to fill the vacancy until the term of the officer so expires. The votes for removal and to fill the office removed shall be by Australian (secret) ballot. (Added 2013, No. M-8, § 2, eff. May 23, 2013.)

Chapter 157 : Town Of Windsor

Subchapter 003 : Elected Officers

(Cite as: 24 App. V.S.A. ch. 157, § 11)

- § 157-11. Elected officers

(a) The following officers shall be elected by the voters of the Town of Windsor, and voting for all such officers shall be by Australian ballot:

- (1) five Selectboard members;
- (2) one Town Clerk;
- (3) one Town Treasurer;
- (4) one Moderator;
- (5) three listers;
- (6) [Repealed.]
- (7) three trustees of public funds.

(b) Only a voter of the Town of Windsor may seek election to or hold a Town elected office.

(c) Any officer elected under this charter may be removed from office as follows: A petition signed by not less than 15 percent of the registered voters shall be filed with the Selectboard requesting a vote on whether the elected officer shall be removed from office. The Selectboard shall call a special Town meeting to vote by Australian ballot on whether the elected officer shall be removed. The official shall be removed only if at least one-third of the registered voters of the Town vote, and a majority of those voting vote for removal. If the Town voters vote for removal of an elected officer, the office shall thereupon become vacant. The Selectboard shall call a special Town meeting to fill the vacancy until the term of the officer so removed expires. The votes for removal and to fill the vacancy shall be by Australian ballot. The Selectboard may fill such vacancy by appointment until a new member is duly elected.

(d) The vote to fill any vacancy shall be by Australian ballot. The Selectboard, or its remaining members, may fill any vacancy by appointment until a new member is duly elected. If only one member remains, that Selectboard member may sign the orders.

(e) A member of the Selectboard shall not be a lister or an employee of the Town. A Town administrator shall not hold any elected office in the Town government. (Amended 1999, No. M-12 (Adj. Sess.), § 5, May 9, 2000; 2005, No. M-13 (Adj. Sess.), § 5, eff. May 17, 2006; 2011, No. M-18 (Adj. Sess.), § 2, eff. May 9, 2012.)



TOWN of WINDSOR

P.O. Box 47 • 147 Main Street
Windsor, Vermont 05089

WARNING FOR SPECIAL TOWN MEETING November 25, 2003

The legal voters of the Town of Windsor, Vermont are hereby notified and warned to meet at the **Green Room** in the Windsor Municipal Center, 29 Union Street in said Town, Tuesday, November 25, 2003 to vote by Australian ballot on the petitioned articles to recall public officials. Polls open at 9:00 a.m. and close at 7:00 p.m.

There will be an informational meeting on the questions, Monday, November 24, 2003 at 7:00 P.M. in the **Selectboard Chambers**, Windsor Municipal Building, in said Town.

ARTICLE 1: Shall the voters of the Town of Windsor vote to remove from office, Desmond Willey, Selectboard Member; Chair?

ARTICLE 2: Shall the voters of the Town of Windsor vote to remove from office, Barbara Flinn, Selectboard Member; Vice-Chair?

ARTICLE 3: Shall the voters of the Town of Windsor vote to remove from office, Michael T. Quinn, Selectboard Member; Secretary/Clerk?

ARTICLE 4: Shall the voters of the Town of Windsor vote to remove from office, Gerald Lepisko, Selectboard Member?

Dated at Windsor this 23rd day of October, 2003.

Desmond Willey
Desmond Willey, Chairman

Barbara Flinn
Barbara Flinn, Vice Chairperson

Vincent Fusca, III

Jerry Lepisko
Jerry Lepisko

Michael T. Quinn
Michael Quinn

Received for record this 24th day of October, 2003.

Sandra Hinkley Micka, Town Clerk

Sandra H. Micka

Chapter 155 : Town Of Underhill

Subchapter 006 : Recall Of Elected Town Officers

(Cite as: 24 App. V.S.A. ch. 155, § 61)

- § 61. Recall of elected town officers

Any elected Town officer may be removed from office subject to the following conditions and procedures:

(1) A written petition that is signed by not less than 15 percent of the registered voters of the Town seeking the removal of the Town officer or officers and requesting a vote of the Town at a regular or special Town meeting called for that purpose shall be filed with the Town Clerk.

(2) The Selectboard shall call a special Town meeting, to be held within 45 days of receiving the petition, to vote on whether the elected officer shall be removed. The vote shall be held by Australian ballot.

(3) When the petition is approved by a majority of the ballots cast at the special Town meeting, the Town officer named in the petition shall cease to hold the office.

(4) A vacancy resulting from the recall of an officer shall be filled in the manner prescribed by law.

(5) A recall petition shall not be brought against an individual more than once within 12 months. (Added 2021, No. M-3, § 2, eff. June 1, 2021.)

Underhill says 'yes' to recalling selectboard member

By Calvin Cutler

Published: Oct. 20, 2021 at 4:37 PM EDT

UNDERHILL, Vt. (WCAX) - Voters in Underhill made state history Tuesday, recalling a sitting selectboard member.

Voters overwhelmingly voted to recall Peter Duval by a margin of 570 to 23.

"When you get 96% of the voters to say your time is over, I think that speaks loudly," said Kurt Johnson, a former selectboard member.

Duval was elected on Town Meeting Day last year through write-ins in an uncontested race. After he was elected, former selectboard members say he violated Underhill's conflict of interest policy. And town staff also allege he was verbally abusive toward staff and other selectboard members.

"He would try to throw a wrench in every topic that would come up at the selectboard meeting," said Jennifer Silpe-Katz, Underhill's finance officer.

They say the former town administrator even resigned because of conflict with Duval. So, last July staff began drafting a town charter change allowing for the recall of an elected officer. Voters gave it the green light on Town Meeting Day. Lawmakers in Montpelier also gave it the seal of approval and the governor signed it into law.

Sixteen towns in Vermont have charter recall amendments on the books. But with Tuesday's special election, Underhill became the first town in Vermont history to actually use it.

Duval declined to directly address the alleged conflict of interest or mistreatment of town employees but says "It's impossible to prove a negative." Duval also says he's relieved with the vote. "I thought maybe the yes committee had gone too far, I mean a lot too far, so I was relieved," he said. He also says the recall could have implications for other four-year officeholders. "That could be really destabilizing I think."

Underhill staff say they're glad the vote is over too. They say the pandemic put more eyes on local government through streaming platforms, allowing for more transparency and more accountability. "People have written us letters of support, called us, said 'we're rooting for you,' and then came out yesterday and voted," Silpe-Katz said.

bixby112@comcast.net

From: Susan McNamara-Hill <SMcnamahill@ESSEX.ORG>
Sent: Monday, December 5, 2022 9:18 AM
To: bixby112@comcast.net; Town of Essex Clerks
Subject: RE: Voter Registration

Good morning Bradley:

There are currently 8,981 registered voters in Essex, 728 of which are currently challenged. There were six voters who completed an Affirmation of Residence/Domicile form at the pools and were allowed to vote.

You are correct, only active, non-challenged voters were mailed ballots by the state.

Please let me know if you have further questions.

Susan McNamara-Hill, CVC/CVT
Clerk/Treasurer
City of Essex Junction/Town of Essex
81 Main Street
Essex Junction, VT 05452
802-857-0066

From: bixby112@comcast.net <bixby112@comcast.net>
Sent: Friday, December 2, 2022 7:40 PM
To: Town of Essex Clerks <Clerk@ESSEX.ORG>
Subject: Voter Registration

DN: This email originated from **OUTSIDE** our organization. **STOP & CONSIDER** before responding, clicking on links, or opening attach

Hi Susan,

Could you provide me with the total number of voters on the Town checklist and how many are challenge voters. During the November election how many challenge voters validated their residency and were allowed to vote? I understand that in the November election the State mailed ballots to active registered voters only!

With your many years of experience would you say that voter turnout is much less during a special election versus a general election?

Thank you,

Bradley J. Kennison
802-310-2745

 Virus-free. www.avast.com

1 S.181

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Municipal government; regulatory provisions; police power of
6 municipalities; miscellaneous regulatory powers

7 Statement of purpose of bill as introduced: This bill proposes to make
8 miscellaneous amendments related to the regulatory authority of municipal
9 corporations to:

10 (1) authorize the legislative body of a municipality to adopt ordinances
11 governing: the installation of sidewalks; the implementation of traffic-calming
12 measures; the location and installation of storm drains; property management
13 standards; the maintenance of vacant or blighted property; and the removal of
14 damaged or leaking boats from bodies of water;

15 (2) authorize municipalities to vote by Australian ballot to revert from
16 charter-specific authority to authority delegated in later-enacted general law;
17 elect nonresidents to town offices; add members to the municipal legislative
18 body; eliminate the office of constable; recall local officials; adopt a one
19 percent local options tax on sales, meals and alcoholic beverages, and rooms;
20 change the number of members that serve on an appropriate municipal panel;

1 ~~(4) The term of office of any constable in office on the date a town votes~~
2 ~~to eliminate that office shall expire on the 45th day after the vote or on the date~~
3 ~~upon which the selectboard appoints a law enforcement officer under this~~
4 ~~subsection, whichever occurs first.~~

5 Sec. 6. 17 V.S.A. § 2668 is added to read:

6 § 2668. RECALL OF LOCAL OFFICIALS

7 (a) Any elected municipal officer may be removed from office subject to
8 the procedure for voter-initiated petition contained in this section.

9 (b) A petition for a vote on the question of recalling an elected municipal
10 officer shall be signed by not less than 15 percent of the active registered
11 voters of the municipality and presented to the legislative body or the clerk of
12 the municipality.

13 (c) When a petition is submitted in accordance with subsection (b) of this
14 section, the legislative body shall call a special meeting within 60 days from
15 the date of receipt of the petition, or include an article in the warning for the
16 next annual meeting of the municipality if the annual meeting falls within the
17 60-day period, to determine whether the voters will remove the elected
18 municipal officer.

19 (d) When the petition is approved by a majority of the ballots cast at the
20 special or annual meeting, the elected municipal officer named in the petition
21 shall cease to hold the office.

1 (e) A vacancy resulting from the recall of an elected municipal officer shall
2 be filled pursuant to 24 V.S.A. chapter 33, subchapter 6.

3 (f) A recall petition shall not be brought against an individual elected
4 municipal officer more than once within any 12-month period.

5 Sec. 7. 24 V.S.A. § 138 is amended to read:

6 § 138. LOCAL OPTION TAXES

7 ~~(a) Local option taxes are authorized under this section for the purpose of~~
8 ~~affording municipalities an alternative method of raising municipal revenues to~~
9 ~~facilitate the transition and reduce the dislocations in those municipalities that~~
10 ~~may be caused by reforms to the method of financing public education under~~
11 ~~the Equal Educational Opportunity Act of 1997. Accordingly:~~

12 ~~(1) the local option taxes authorized under this section may be imposed~~
13 ~~by a municipality;~~

14 ~~(2) a municipality opting to impose a local option tax may do so prior to~~
15 ~~July 1, 1998 to be effective beginning January 1, 1999, and anytime after~~
16 ~~December 1, 1998 a local option tax shall be effective beginning on the next~~
17 ~~tax quarter following 90 days' notice to the Department of Taxes of the~~
18 ~~imposition; and~~

19 ~~(3) a local option tax may only be adopted by a municipality in which:~~

20 ~~(A) the education property tax rate in 1997 was less than \$1.10 per~~
21 ~~\$100.00 of equalized education property value; or~~

Town of Essex Proposed Charter Revisions 2022

§ 117-205. Recall of Selectboard Members

(a) A petition signed by fifteen percent of the registered voters of the municipality, based upon the total number of registered voters at the last preceding municipal election, demanding the recall of the Selectboard member or members cited in the petition shall be filed with the Board of Civil Authority. The allowable grounds for removal are misconduct, malfeasance, nonfeasance, crimes in office, gross incompetency, corruption, or theft. The petition shall contain a specific statement of the grounds on which removal is sought. Disagreements with decisions made by the Selectboard on policy issues shall not be grounds for recall.

(b) The Board of Civil Authority shall certify if the aforementioned grounds for removal have been met. The approval or rejection of such a petition shall be preceded by a public meeting held by the Board of Civil Authority at which time testimony is taken in support of or opposition to the petition. The Selectboard member or members named in the recall petition shall not sit as a member of the Board of Civil Authority for the purpose of this hearing and certification vote.

(c) If the Board of Civil Authority certifies that the petition meets the grounds for dismissal, that Board shall refer the petition to the Selectboard, which shall call for a public vote on the petition.

(d) The Selectboard member shall be removed only if at least as many registered voters of the Town vote as voted in the election wherein the officer was elected, or at least one-third of the registered voters of the Town vote, whichever is greater, and a majority of that number vote for removal. The Selectboard member or members shall be removed from office immediately and the Selectboard shall then name a successor in accordance with the replacement provisions of this charter.

**TOWN OF ESSEX
CONFLICT OF INTEREST POLICY**

Article 1. Authority.

Under the authority granted in 24 V.S.A. § 2291 (20) and the Town of Essex Charter, 24 Appendix V.S.A. § 103 (a), the Town of Essex Selectboard hereby adopts the following policy concerning conflicts of interest.

Article 2. Purpose.

The purpose of this policy is to ensure that the business of the Town of Essex will be conducted in such a way that no public official will gain a personal or financial advantage from the official's work for the Town; that decisions made by municipal officials are based solely on the best interests of the community; and that the public trust in municipal officials will be preserved.

Article 3. Application. This policy applies to all public officers as that term is defined below.

Article 4. Definitions. For the purposes of this policy, the following definitions shall apply:

A. ***Conflict of interest*** means any of the following:

1. A real or perceived, direct or indirect, personal or financial interest of a public officer, including but not limited to the officer's spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, in-law, business associate, or employer or employee, in the outcome of a cause, proceeding, application, or any other matter pending before the officer or before the public body in which the public officer holds office;
2. A situation where a public officer has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding. This section shall not apply to a member's particular political views or general opinion on a given issue; and
3. A situation where a public officer has not disclosed ex parte communications with a party in a quasi-judicial proceeding.

A "conflict of interest" does not arise in the case of votes or decisions on matters in which the public official has a personal or financial interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision.

B. ***Emergency*** means an imminent threat or peril to the public health, safety or welfare.

C. ***Ex Parte Communication*** means direct or indirect communication between a member of a public body and any party, party's representative, party's counsel or

any person interested in the outcome of a quasi-judicial proceeding, that occurs outside the proceeding and concerns the substance or merits of the proceeding.

- D. **Official act or action** means any legislative, administrative or quasi-judicial act performed by any elected or appointed officer while acting on behalf of the municipality.
- E. **Public body** means any board, council, commission, or committee of the municipality.
- F. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.
- G. **Public officer** means a person elected, or appointed by the Selectboard, to perform executive, administrative, legislative, or quasi-judicial functions for the municipality.
- H. **Quasi-judicial proceeding** (e.g., vicious dog complaint) means a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority.

Article 5. Prohibited Conduct.

- A. A public officer shall not participate in any official action if the officer has a conflict of interest in the matter under consideration, unless the officer can act fairly, objectively, and in the public interest, per Article 8.
- B. A public officer shall not personally, or through any member of the officer's household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in a cause, proceeding, application, or other matter pending before the public body in which the officer holds office.
- C. Public officers shall not accept gifts or other offerings for personal gain by virtue of their public office that are not available to the public in general.
- D. Public officers shall not use resources unavailable to the general public, including but not limited to Town staff time, equipment, supplies, or facilities, for private gain or personal purposes.

Article 6. Disclosure.

Public officers who have reason to believe that they have or may have a conflict of interest but believe that they are able to act fairly, objectively, and in the public interest in spite of the potential conflict of interest shall, prior to participating in any official action

on the matter, disclose to the public body at a public meeting or hearing the matter under consideration, the nature of the potential conflict of interest, and why they believe that they are able to act in the matter fairly, objectively, and in the public interest.

Alternatively, any person may request, but not require, a public officer to recuse oneself from a matter due to a conflict of interest.

Article 7. Consideration of Recusal.

Once there has been a disclosure of an actual or perceived conflict of interest, other public officers shall be afforded an opportunity to ask questions or make comments about the situation. If a previously unknown conflict is discovered during a meeting or hearing conducted by a public body of the municipality, the public body shall take evidence pertaining to the conflict and, if appropriate, adjourn to an executive session to address the conflict.

Article 8. Recusal.

- A. **Recusal of Appointed and Elected Officers.** After taking the actions listed in Articles 6 and 7, public officers, whether appointed or elected, shall declare whether they will recuse themselves and explain the basis for that decision. If public officers have an actual or perceived conflict of interest but believe they can act fairly, objectively, and in the public interest in spite of the conflict, officers shall state why they believe that they are able to act in the matter fairly, objectively, and in the public interest.

Otherwise, public officers shall recuse themselves from the matter under consideration.

- B. **Recusal of Appointed Officers.** The failure of an appointed public officer to recuse oneself in spite of a conflict of interest may be grounds for discipline or removal from office.

Article 9. Recording.

The minutes of the meeting or the written decision from the hearing shall document the actions taken in Articles 6 through 8.

Article 10. Post-Recusal Procedure.

- A. A public officer who has recused oneself from a proceeding shall not sit with the board, deliberate with the board, participate in that proceeding as a board member in any capacity, nor remain physically present in the room. Board members participating remotely shall leave the meeting during the item for which they have recused themselves.
- B. The board may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the board. The board may then resume the proceeding with sufficient members present.

Article 11. Enforcement.

A. Enforcement Against Elected Officers; Progressive Consequences for Failure to Follow the Conflict of Interest Procedures. In cases where an elected public officer has engaged in any of the prohibited conduct listed in Article 5, or has not followed the conflict of interest procedures in Articles 6 through 10, the Selectboard may take progressive action to discipline an offending public officer by following the steps listed below:

1. The Chair shall meet informally, in private, with the public officer to discuss the possible conflict of interest violation. If the Chair is potentially in violation of the conflict of interest policy, the Vice Chair shall meet with the Chair to discuss the possible conflict.
2. The board may meet to discuss the conduct of the public officer. Executive session may be used for such discussion in accordance with 1 V.S.A. § 313(a)(4). The public officer may request that this meeting occur in public. If appropriate, the board may admonish the offending public officer in executive session.
3. If the board decides that further action is warranted, the board may admonish the offending public officer at an open meeting and have this action recorded in the minutes of the meeting. The public officer shall be given the opportunity to respond to the admonishment.
4. Upon majority vote in an open meeting, the board may request that the offending public officer resign from the board. The Selectboard cannot order a member to resign, as members of the Selectboard are elected directly by the people and no recall provisions exist in State law or the Town charter.

B. Enforcement Against Appointed Officers. A board may choose to follow any of the steps articulated in Article 11A. In addition to or in lieu of any of those steps, the Selectboard may choose to remove an appointed officer from office, subject to state law.

Article 12. Exception.

The recusal provisions of Article 8 shall not apply if the Selectboard determines that an emergency exists and that actions of the public body otherwise could not take place. In such cases, public officers who have reason to believe they have a conflict of interest shall disclose such conflict as provided in Article 6.

Article 13. Effective Date.

This policy shall become effective immediately upon its adoption by the Town of Essex Selectboard.

Town of Essex Selectboard

Andrew J Watts
Andrew J Watts (Apr 24, 2021 08:13 EDT)

Andrew J. Watts, Chair

Tracey A Delphia
Tracey A Delphia (Apr 16, 2021 13:36 EDT)

Tracey Delphia, Clerk

Dawn Hill-fleury
Dawn Hill-fleury (Apr 16, 2021 17:02 EDT)

Dawn Hill-Fleury

Dated: April 5, 2021

Patrick Murray
Patrick Murray (Apr 24, 2021 13:51 EDT)

Patrick Murray, Vice Chair

Vince Franco
Vince Franco (Apr 23, 2021 13:42 EDT)

Vince Franco

Adopted 06/04/12. Signed 06/18/12; 04/20/15; Amended 04/18/2016; 10/2/17; 4/2/18; 4/5/21.

Planning Commission and Zoning Board of Adjustment Comments about Development Review Board

Planning Commission

Joshua Knox:

Here are my thoughts/questions about the proposed charter change(s):

First off, am I correct that whatever amendments the BoS puts before the voters will be a 'package deal' of sorts? That is, the question will read "Do you support amending the Essex Town Charter as warned?" I imagine that it would be excessive to have the voters weigh in on individual changes, but I want to make sure that it's yay or nay to the entire document.

With that said, my main questions are similar to those that Dusty asked last night. The idea of switching to a PC/DRB made a lot of sense to me in the context of merger, because we would need one PC to view the merged community as a whole and devote themselves to planning, but two DRBs with experience in each subset (TIV/TOV). Was the assumption from the Charter Change Committee that we'll be experiencing enough growth to warrant the change even post-merger?

Furthermore, what is the thinking in shifting from 7 full-time members, with the possibility of an alternate as needed, to 5 full-time members and 5 alternates? Would the alternates only be summoned when it's anticipated that a quorum may not be present at a given meeting, or is the objective to have 5 voting members locked in for every meeting well ahead of time? Or would the alternates always be assumed to be in attendance, and at 6:00 we'd decide which alternates would be voting members and which would be glorified observers? Moreover, given the current compositions of the PC and ZBA, the charter change would mean the demotion of 2 active PC members to alternate, even if we assume the BoS is of a mind to re-appoint everyone to their former(ish) positions in 2024 when the prior boards are dissolved.

I am open to supporting this idea, or some form of it, because I do like the concept of a municipal board solely devoted to planning-visioning-zoning updates. But since the Charter Change Committee did not reach out to us ahead of time - again, in direct contrast to what we're trying to achieve with our various workgroups - I feel we're hard-pressed to support this exact proposal now - without knowing the reasoning behind it - in order to move toward the concept of 'pure planning,' or be against the entire charter change as proposed.

Thank you for any answers you can provide!

I had been meaning to tell you that one of my neighbors asked me to speak on the Charter change for Monday's meeting. I wasn't familiar at all, so I went and looked at the proposed changes and saw the DRB/Planning thing - a total surprise to me as well - and responded that it was highly inappropriate for me to speak at the BoS meeting, since the PC hadn't been informed on the change and therefore hadn't taken an official stance.

Jonathan Schumacher

Regarding the charter change for ZBA/DRB/PC. I am not opposed to the change; indeed, I deal with a lot of town DRBs in the projects our company gets involved with. Usually they are not subdivision applications, but most often a lingering requirement any change to a master plan end up before a board.

For Essex, I would like to know what the thinking is for the change. Has someone determined that our current model is inefficient? Will this change help alleviate the workload for staff? Is there a push from the state to structure our planning process this way?

As I think Dustin was saying, disconnecting application review from planning could create some tension/miscommunication for the overall process.

Other than this bit of feedback, I am relatively neutral to the possible change. I share the concern that there was no discussion of this with the ZBA or the PC – it seems that our experience as board members doesn't seem to matter, as well as the lack of public process. Maybe I am missing something.

Patty Davis

I guess if I put myself in Katherine's shoes, I would have not been a fan of not being a person or PC member that was personally included in the loop that Charter Change was considered with details on how it would change. (i.e. Member change to 5), Before presenting it to the SB last Monday night. What's done is done. At this point, we just have to move forward even though some of us don't know if we will continue to even be a member of either board. But, this is my take on the process that occurred.

David Raphael

What I would say is that in general, I have supported looking into a DRB in the past. However, I'm not convinced it's the right move for Essex. In towns where I have been an applicant or represented a client at the table of DRB hearings, it has felt very different than how our process in Essex has successfully worked. I'm concerned that moving to a Planning Commission and DRB model would mean that the people doing the planning are not the same people hearing the applications. The law of unintended consequences might come into play where we get people who don't know the total picture. I also worry about having enough qualified people to serve on both boards and in reducing the number of members to only five. I would say it would be worth exploring but I am not ready to declare it a foregone conclusion just yet. While we don't have a ton of time to do planning, I wonder what is not working in Essex that would necessitate the move?

Zoning Board

Hubie Norton

It is understood there is a need to separate the site plan review process from the planning duties of the planning commission. However, there is concern that the site plan review process will overshadow the zoning

matters that may come before the DRB. Although the planning commission and the zoning board are both quasi-judicial boards, the zoning board tends to be more purely judicial with judgments of yea or nay where the planning commission in the site review process has exhibited directed actions sometimes requiring specific design elements be incorporated in a site plan rather than request presentations of options to address a particular concern. The hope is the DRB will conduit itself in a purely judicial manner and should set up its operating procedures to clearly define when it is acting as a site plan review board and when it is acting as a zoning matter adjudicator.

Nick Martin

I don't feel strongly changing the ZBA to the DRB. I suppose my *preference* would be ZBA just to honor continuity of the Board, but small fries. No matter to me, really.

NO to alternates. My experience has been that when alternates are needed, they are unaware of what's going on or how meetings are conducted, are often times un-interested in filling in when actually called upon, and offer little value to small Boards like the ZBA/DRB. Alternates can become a real liability to the community. Avoid it, if possible.

Two different models for Planning and Land Use Review, as enabled in state Statute 24 V.S.A. §4321 and 4360

Planning Commission / Zoning Board of Adjustment

- PC fills both legislative and quasi-judicial roles
 - Legislative:
 - Conducts outreach to community at large
 - Amends Land Use Regulations
 - Long Range Planning (Town Plan and other more specific planning)
 - Reviews Capital Plan
 - Quasi- Judicial
 - Reviews site plan and subdivision applications (quasi-judicial role)
- ZBA occupies quasi-judicial role
 - Hear ZA appeals and review conditional use applications

Planning Commission / Development Review Board

- Planning Commission legislative entity
 - Conducts outreach to community at large
 - Amends Land Use Regulations
 - Long Range Planning (Town Plan and other specific planning)
 - Reviews Capital Plan
- DRB quasi-judicial entity
 - Conducts all development review
 - Hears all ZA appeals