

MAINE STATE LEGISLATURE

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EIGHTY-FIFTH LEGISLATURE

Legislative Document

No. 273

H. P. 751

House of Representatives, Feb. 3, 1931.

Referred to Committee on Legal Affairs and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Davis of Old Town.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND THIRTY-ONE

AN ACT to Grant a New Charter to the City of Old Town.

Be it enacted by the People of the State of Maine, as follows:

ARTICLE I
GRANT OF POWERS TO THE CITY

Corporate Existence Retained. The inhabitants of the city of Old Town, in the County of Penobscot, shall continue to be a body corporate and politic under the name of the city of Old Town and as such shall be, have, exercise and enjoy all the rights, immunities, powers, privileges and franchises and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise appertaining to or incumbent upon said city as a municipal corporation, or appertaining to or incumbent upon the inhabitants thereof or municipal authorities thereof; and may enact by-laws, regulations and ordinances for municipal purposes not inconsistent with the constitution and laws of the State of Maine, and impose penalties for the breach thereof.

ARTICLE II
CITY COUNCIL

Section 1. Powers and Duties. The administration of all the fiscal, prudential, and municipal affairs of said city with the

government thereof, except the general management, care, conduct and control of the schools of said city, which shall be vested in a school committee as hereinafter provided, and also except as otherwise provided by this charter, shall be and are vested in one body of seven members, which shall constitute and be called the City Council, all of whom shall be inhabitants of said city, and shall be sworn in the manner hereinafter prescribed. Said city council shall exercise its powers in the manner hereinafter provided.

The members of the City Council shall be and constitute the municipal officers of the city of Old Town for all purposes required by statute, and, except as otherwise herein specifically provided, shall have all powers and authority given to and perform all duties required of municipal officers, and mayors of cities under the laws of this state.

The City Council is hereby constituted the overseers of the poor of the city of Old Town and shall perform all duties required of overseers of the poor for cities by statute or otherwise. As such overseers of the poor they may authorize a clerk or agent to sign in their name and send written notices and the written answers referred to or required in sections thirty-one and thirty-two of chapter thirty-three of the revised statutes, and such written notices and written answers, so signed, shall have the same effect as if signed by one or more of said overseers and sent by a member or members of said overseers personally.

All the powers of establishing a watch and ward, now vested by the laws of the state in the justices of the peace and municipal officers or inhabitants of towns, are vested in the said City Council so far as relates to said city; and they are authorized to unite the watch and police departments into one department and establish suitable regulations for the government of the same.

For election purposes, said city shall be divided into five wards, each to contain as nearly as may be convenient, consistently with well-defined boundaries, an equal number of the inhabitants of said city; and it shall be the duty of the city council, once in ten years and not oftener than once in five years, to revive and, if alteration is deemed necessary, to alter the boundaries of said wards in such manner as to preserve as

nearly as convenient an equal number of inhabitants in each ward.

The council shall have the power, by a five-sevenths vote of the members, to increase or decrease the number of wards provided that the above stated rules regarding "well-defined boundaries" and "an equal number of inhabitants" shall be observed.

The members of the city council shall be and constitute the park commission and shall have the powers and perform the duties of the park commission provided for by section one hundred seven of Chapter five of the Revised Statutes. They shall also be and constitute the cemetery board and shall have the powers and perform the duties of the cemetery board provided for by Chapter 210 of the Private Acts of 1895.

All other powers now or hereinafter vested in the inhabitants of said city, and all powers granted by this act, except as herein otherwise provided, shall be vested in said city council.

However, neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager, or in any manner interfere with the city manager or prevent him from exercising his own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately.

Sect. 2. Composition, Election, Tenure of Office, etc. The city council shall be composed of seven members elected at large from the qualified voters of the city for a term of three years and until their successors are elected and qualified, except that at the first election of members of the city council the three members elect who shall receive the largest number of votes cast at such election shall hold office for three years; the two members elect who shall receive the second largest number of votes cast at such election shall hold office for two years; and two members elect who shall receive the third largest number of votes cast at such election shall hold office for one year; and each shall hold office until his successor is elected and qualified.

Each member shall serve without pay, and shall not be eligible, while a member of the council, to any office of emolument or profit under the city charter or ordinances, nor to hold the office of city manager, nor to act as city manager.

Sect. 3. President. At the first meeting, or as soon thereafter as possible, the city council shall elect by majority vote, one of its members as president of the council for the ensuing year, and until his successor is elected and qualified, and the city council may fill for the unexpired term any vacancy as president that may occur.

If the president shall fail from sickness, disability, absence from the city or other cause to attend to and perform the duties incumbent on him as such president the remaining members of the city council may by unanimous vote, after notice and hearing, terminate the term of office of said president and remove him therefrom and thereupon by majority vote may elect some other member of said city council president and such newly elected member shall thereupon and thereafter hold the office and perform the duties of president for the balance of the year, and until his successor is elected and qualified.

The president shall preside at all meetings of the council, and shall perform such other duties, consistent with this office, as the council may provide. He shall be entitled to vote, and his vote shall be counted upon all matters and things as a vote of other members of the council. The president shall be recognized as the official head of the city for ceremonial purposes, and shall have the powers and authority given to and perform the duties required of mayors of cities for all purposes of military law, and shall act in lieu of the mayor in so far as representation is provided for the city by the mayor upon any board or commission by any statute. In the temporary absence or disability of the president the city council may select a president pro tempore from among its number and he shall exercise all the powers of the president.

Sect. 4. Vacancies, Forfeiture of Office. In case of a vacancy caused by the death, resignation, removal from the city, or removal from office, as hereinafter provided, of any member of the city council more than six months prior to the next regular city election, the vacancy shall be filled by a special election, the warrant for which shall upon vote of the city council be issued by a member of the city council by vote designated for that duty.

Any member of the city council who shall be convicted of a crime while in office shall, after due notice and hearing before the city council and the production of the records of such conviction, forfeit his office.

Sect. 5. Regular Meetings and Qualifications. The city council shall meet at the usual place for holding meetings at ten o'clock A. M. on the first Monday in January following the regular city election, and at said meeting the councilmen elect shall be sworn to the faithful discharge of their duties by a justice of the peace, or by the city clerk. The city council shall, at its first meeting, or as soon thereafter as possible establish by ordinance or resolution a regular place and times for holding its meetings, and shall meet regularly at least once a month.

Sect. 6. Special Meetings. Special meetings may be called by the president and in case of his absence, disability or refusal, may be called by a majority of the members of the city council. Notice of such meeting shall be served in person or left at the residence of each member of the city council at least twenty-four hours before the time of holding said special meeting.

Sect. 7. Quorum. A majority of the members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least twenty-four hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

Sect. 8. Procedure. The city council shall keep a record of its proceedings and shall determine its own rules of procedure and make lawful regulations for enforcing the same. The meetings of the city council shall be open to the public. The city council shall act only by ordinance, order or resolve; all ordinances, orders and resolves, except orders or resolves making appropriations of money, shall be confined to one subject which shall be clearly expressed in the title. The appropriation order or resolve shall be confined to the subject of appropriations only. No ordinance and no appropriation resolve shall be passed until it has been read on two separate days, except when the requirement of a reading on two separate

days has been dispensed with by a four-sevenths vote of the members of the city council. The yeas and nays shall be taken upon the passage of all ordinances and entered on the record of the proceedings of the city council by the clerk. The yeas and nays shall be taken on the passage of any order or resolve when called for by any member of the city council. Every ordinance shall require on final passage the affirmative vote of a majority of the members of the city council.

Every ordinance before final passage shall be published in one or more newspapers published and circulated in Penobscot County and shall take effect and be in full force ten days from and after it shall have received final passage by the city council and have been approved, in case such approval is required by law, by some justice of the supreme judicial court. Within ten days after its final passage or after said approval by such justice said ordinance shall be published in full in one or more of the newspapers in Penobscot County, but the failure to publish said ordinance, either before or after final passage shall not affect its validity or force.

No order or resolve shall take effect until ten days after its passage, except that the city council may, by vote of five-sevenths of its members, pass emergency orders or resolves to take effect at the time indicated therein, but such emergency orders or resolves shall contain a section in which the emergency is set forth and defined.

ARTICLE III

Section 1. How Invoked. The submission to the vote of the people of any proposed ordinance, order or resolve, except an order granting a permit under sections 27 to 33, both inclusive, of chapter sixty-eight of the revised statutes, or of any such ordinance, order or resolve enacted by the city council and which has not yet gone into effect, may be accomplished by the presentation of a petition, therefor to the city council in the manner hereinafter provided. Any ten qualified voters of the city of Old Town may originate a petition putting in operation the initiative or the referendum, by signing such petition at the office of the city clerk. Whenever requested by ten such voters, the city clerk shall prepare the proper petition with a copy of the ordinance, order or resolve to be

submitted attached thereto and upon its being signed by said ten voters, the city clerk shall file the petition and shall, during office hours for thirty business days thereafter, keep the same open for signature by qualified voters of the city, and no such petition shall be signed or presented for signature at any place other than the clerk's office. At the expiration of said thirty days, the city clerk shall declare the petition closed, and shall, at the first regular meeting of the city council thereafter, present to that body the petition with verification of the number of valid signatures thereto attached. If the number of valid signatures to said petition shall amount to five hundred or more, the city council shall immediately take the necessary steps to submit to the voters of the city the question proposed in said petition; provided that in case of the referendum the entire repeal of the ordinance, order or resolve sought to be referred, and in the case of the initiative, the passage by the city council of the desired ordinance, order or resolve, shall put an end to all proceedings under said petition.

Sect. 2. Form of Petition. The petition used to originate the initiative or the referendum shall be substantially in the following form.

PETITION TO THE CITY COUNCIL

For the submission to the people of the question :

Shall the proposed ordinance, order or resolve, a copy of which is hereto attached, be adopted?

We, the undersigned, under oath, depose and say: That we are fully qualified voters of the city of Old Town, residing respectively at the addresses placed opposite our names, and we hereby petition the city council to submit the foregoing question to the voters of the city of Old Town at the next regular municipal election (or at a special election.)

Names	Residence	Date
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I,, the city clerk of the city of Old Town do solemnly affirm that I witnessed the signing of each of the above signatures and that, at the time of said signing I made certain that the person affixing his name thereto had reasonable knowledge of the purpose of the petition.

.....
City Clerk.

Date.....

Sect. 3. Effect of Referendum Petition. Whenever there has been originated as aforesaid, a petition for the reference to the people of any ordinance, resolve or order passed by the city council, which ordinance, order or resolve has not yet gone into effect, the same shall be suspended from going into operation until it has been submitted to a vote of the people and has received the affirmative vote of a majority of the voters voting on said question.

Sect. 4. Time of Election. Within ten days after an initiative or referendum petition with the required number of valid signatures is presented by the city clerk, the city council shall set a time for the holding of a special election, at which the proposed or suspended ordinance, resolve or order shall be submitted to the voters of the city, which special election shall be held not less than thirty nor more than sixty days after such presentation; provided, that if a petition shall be so presented within four months next preceding a regular municipal election, no special election shall be called, but the question shall be submitted at said regular election.

Sect. 5. Publication of Ordinance. Whenever any ordinance, order or resolve is required by the provisions of this charter to be submitted to the voters of the city at any election, the city council shall order one publication of the complete text thereof to be made in one or more newspapers of Penobscot County, such publication to be made not less than ten days nor more than fifteen days prior to the election, or in lieu of such publication, the city council may cause the ordinance, order or resolve to be printed and mailed with a sample ballot to each voter at least five days prior to the election.

Sect. 6. Form of Ballot. The ballots used when voting upon such proposed ordinance, order or resolve shall set forth the title thereof in full and state its general nature, and shall contain the words: "For the Ordinance, Order or Resolve" and "Against the Ordinance, Order or Resolve."

Sect. 7. Result of Election. If a majority of the qualified voters voting on said proposed initiative ordinance, order or resolve or said referred ordinance, order or resolve, shall vote in favor thereof, such ordinance, order or resolve shall take effect five days after the declaration of the official canvass of the return of such election.

Sect. 8. Conflicting Ordinances, Orders or Resolves. Any

number of proposed or referred ordinances, orders or resolves may be voted upon at the same election. In the event that two or more ordinances, orders or resolves adopted at the same election shall contain conflicting provisions, the ordinance, order or resolve receiving the highest number of votes at such election shall be paramount and all questions of construction shall be determined accordingly.

Sect. 9. Order Upon the Ballot. In the event that two or more ordinances, orders or resolves are submitted at the same election, they shall be placed upon the ballot in order of the priority of the filing of the respective petitions and shall be given precedence upon the ballot over any and all questions submitted by the city council on its own initiative.

Sect. 10. Repeal of Popular Ordinances, Orders or Resolves Enacted by the People. The city council may submit, on its own initiative, a proposition for the enactment, repeal or amendment of any ordinance, order or resolve, except as herein otherwise provided, to be voted upon at any municipal election and should such proposition receive a majority of the votes cast thereon at any election such ordinance, order or resolve shall be enacted, repealed, or amended accordingly. An ordinance, order or resolve adopted by a vote of the people shall not be repealed or amended except by a vote of the people, unless such ordinance, order or resolve shall otherwise expressly provide.

Sect. 11. Further Regulations. The city council shall by ordinance, make such further regulations as may be necessary to carry out the provisions of this article.

ARTICLE IV

SCHOOL BOARD

Section 1. Composition, Eligibility, Election, Tenure of Office, Special Provision. The school board shall consist of five members appointed by the city council, without reference to ward lines. They shall hold office for a term of five years, and until their successors are appointed and qualified, except that at the first appointment of members of the school board, one member shall be appointed for five years, one member for four years, one member for three years, one member for two years, and one member for one year, and each shall hold office

until his successor is appointed and qualified. If for any reason a vacancy shall exist in the membership of the school board the vacancy shall be filled forthwith by appointment by the city council for the unexpired term.

Sect. 2. Organization, Qualification, Quorum. The school board shall meet for organization within seven days from date of appointment. The members appointed shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk, and a record made thereof. A majority of the whole number appointed shall be a quorum and they shall elect their own chairman.

Sect. 3. Powers, Duties. The school board shall have all the powers, and perform all the duties in regard to the care and management of the public schools of said city, which are now conferred and imposed upon school committees by the laws of this state, except as otherwise provided in this charter. They shall elect a superintendent of schools as provided for by the laws of this state, who shall have the care and supervision of said public schools under their direction, and act as secretary of their board; they shall fix his salary at the time of his election. They shall annually, as soon after the organization of their board as practicable, furnish to the city council an estimate in detail of the several sums required during the ensuing municipal year for the support of the public schools. On the basis of such estimates the city council shall make one gross appropriation for the support of public schools for the ensuing municipal year, and such appropriation shall not be exceeded except by consent of the city council, but the expenditure of said appropriation shall be under the direction and control of the school board.

ARTICLE V

NOMINATIONS AND ELECTIONS

Section 1. Date of Elections and Procedure to Determine Results. At the first election after this charter is in force, to be held on the second Monday in December, A. D. 1931, the qualified voters of the city shall ballot for seven councilmen, and the qualified voters of each ward shall, at the same time, ballot for a warden and a ward clerk for his ward; and thereafter, on the second Monday in December in each year, a

regular municipal election shall be held and the qualified voters of the city shall ballot for a councilman to fill the unexpired term of any councilman whose office is then vacant, if any such vacancy then exists, but whose term of office would not then have normally expired, and for councilmen to fill the office of the councilmen whose terms of office expire that year, and the qualified voters of each ward shall, at the same time, ballot for a warden and a ward clerk for their ward.

All votes cast for the several officers shall be sorted, counted, declared and registered in open ward meeting, as provided by statute. The ward clerk shall forthwith deliver to each person elected warden or ward clerk a certificate of his election and shall forthwith deliver to the city clerk a certified copy of the record of such election.

After the first election held under this charter the then municipal officers and thereafter the city council shall as soon as it conveniently can, examine the copies of the records of the several wards, certified as aforesaid, and shall cause the persons who shall have been elected councilmen to be notified in writing of their election; if it shall appear that at the first election seven councilmen have not been elected, or if, after the first election, it shall appear that no person has been elected councilman, or if the person elected shall refuse to accept the office, warrants for another election to fill such vacancy shall be issued forthwith.

If it shall appear that at the first election to be held under this charter seven councilmen have not been elected, the municipal officers then in office shall continue to hold office and perform their duties until seven councilmen have been duly elected and qualified.

Sect. 2. Warden and Ward Clerk, Elegibility, Tenure, Qualifications, Powers and Duties, Vacancies, Ward Meetings, and How Called. The warden and ward clerk, chosen as provided in the preceding section, shall be residents of the ward for which they are elected and shall hold office for one year from the first Monday in January following their election, and until others have been chosen and qualified in their stead. The warden and the ward clerk shall be sworn to the faithful performance of their duties by a person qualified under the statutes of the state to administer oaths, and a certificate of

such oath shall be entered by the clerk on the records of said ward. The warden shall preside at all ward meetings, with the powers of moderators of town meetings and if at any meeting the warden shall not be present, the clerk of the ward shall call the meeting to order and preside until a warden pro tempore shall be chosen. The warden shall have all rights and powers now held by the warden of such ward. If neither the warden nor the ward clerk shall be present, any legal voter in the ward may preside until a clerk pro tempore shall be chosen and qualified.

Immediately following the election of a clerk pro tempore a warden pro tempore shall be chosen. The clerk shall record all the proceedings and certify the votes given and deliver over to his successor in office all such records and journals in his possession or under his control, together with all documents and papers held by him in his capacity as clerk. The ward clerk shall have and perform all rights and duties now held and performed by the ward clerk of such ward, so far as consistent with this charter. All ward meetings shall be notified and called by the city council in the manner provided by the laws of this state for notifying and calling town meetings by the selectmen of the several towns.

Sect. 3. Nominations for Elective Officers to be Made by Petition. The nomination of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for councilman shall be signed by not less than one hundred twenty-five nor more than two hundred qualified voters of the city. The petition of candidates for warden and ward clerk shall be signed by not less than twenty-five nor more than fifty qualified voters of the ward within which the candidate is to be elected. No voter shall sign petition for more than one candidate for each office to be filled at the election, and should any voter sign more than one such petition, his signature shall be counted only upon the first petition filed, and shall be held void upon all other petitions.

Sect. 4. Form of Nomination Paper. The signatures to **nomination papers** need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers on each petition, and that each signature appended thereto was

made in his presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number of the street, or their description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

TO THE CITY CLERK OF THE CITY OF OLD TOWN

We, the unsigned voters of the city of Old Town, hereby nominate....., whose residence is for the office of to be voted for at the election to be held in the city of Old Town on the day of 19....; and we individually certify that we are qualified to vote for a candidate for the above office and that we have not signed more nomination petitions of candidates for this office than there are persons to be elected thereto.

Name.....Street and Number....., being duly sworn, deposes and says that he, the circulator of the foregoing nominating petition containing.....signatures, and that the signatures appended thereto were made in his presence and are the signatures of the persons whose names they purport to be.

(Signed)

Subscribed and sworn to before me this..... day of19.....

Justice of the Peace
(or Notary Public)

If this petition is deemed insufficient by the city clerk he shall forthwith notify by mail at No. street.

Sect. 5. Filing Nomination Papers, Acceptances of Nominations Must be Filed. The nomination petitions for any one candidate shall be assembled and united into one petition, and filed with the city clerk not earlier than thirty nor later than sixteen days before the day of election. No nomination shall be valid unless the candidate shall file with the city clerk in writing not later than sixteen days before the day of election,

his consent, accepting the nomination, agreeing not to withdraw, and if elected, to qualify.

Sect. 6. List of Candidates to be Published. The city clerk shall certify the list of candidates and shall cause to be published in one or more of the newspapers published in Penobscot County the names, residences, and office to which candidates who have been nominated have duly filed the above described petitions and acceptances.

Sect. 7. Ballots, etc. to be Prepared by the City Clerk. Specimen ballots and official ballots for use in all city elections shall be prepared by the city clerk and furnished by the city.

Sect. 8. Form of Ballot. The names of candidates nominated as provided in this charter shall be arranged on the ballot according to lot under the title of the office to be filled. Lot shall be drawn by the city clerk, at which drawing the candidates or their representatives shall be entitled to be present.

The ballots shall be without party mark or party designation. The name and residence of each candidate shall be given. The ballot shall contain four columns for crosses at the right of the candidate's name and residence, and said columns shall be headed, respectively "First Choice," "Second Choice," "Third Choice" and "Other Choices."

Blank spaces shall be left at the end of the list of candidates for each office in which the voter may insert the name of any person not printed on the ballot, for whom he desires to vote.

The ballot shall be printed substantially as follows:

CITY OF OLD TOWN

Regular (or Special) Election

Monday, the day of A. D.

Instructions to Voters:

To vote for any person, make a cross (X) in the space at the right of the name voted for, and in the proper column according to your choice.

Mark your first choice in the first column, your second choice in the second column, your third choice in the third column, and in the fourth column mark all other candidates whom you wish to support. You may mark as many choices in each

column as there are positions to fill. Do not mark more than one choice for any one candidate, as only one choice will count for any one candidate on the ballot.

FOR COUNCIL		First	Second	Third	Other
Vote for		Choice	Choice	Choice	Choices
Name	Residence				
.....					
.....					
.....					
.....					
(blank)					
"					
FOR WARDEN					
Vote for One					
Name	Residence				
"	"				
(blank)					
FOR WARD CLERK					
Vote for One					
Name	Residence				
"	"				
(blank)					

(On Back of Ballot)

Old Town, Maine, Monday,A. D.

Official Ballot

Ward

(Facsimile of Signature)

City Clerk.

Sect. 9. Count of Ballots. As soon as the polls are closed, the warden shall immediately open the ballot boxes, take therefrom the ballots and sort, count and declare them in open meeting in the presence of the ward clerk; and the ward clerk shall from a list of the persons voted for with the number and character as to choice of the votes for each person against his name, make a fair record thereof in the presence of the warden, and in open ward meeting enter the total number thereof on

a tally sheet provided by the city clerk. The ward clerk shall enter the number of the first choice, second choice, third choice and other choice votes, for each candidate opposite the name of such candidate on said tally sheet, and make return thereof to the city clerk on a blank by said city clerk to be provided. Only one vote shall be counted for any candidate on any one ballot. If two or more choices are marked on one ballot for one and the same candidate, the highest choice marked shall be counted, except as otherwise herein provided, and all other marks considered void. If a ballot contains either first choice, second choice, or third choice votes in excess of the number of offices to be filled, no vote in the column showing such excess shall be counted. Except as hereinbefore provided, all choices shall be counted as marked on the ballot.

Sect. 10. Returns, Canvass. Upon receipt of the returns, from the first election under this charter, the then municipal officers and thereafter the city council shall determine the successful candidates as hereinafter provided in this section.

The person receiving a majority of first choice votes, cast at an election for any office, shall be elected to that office; if no candidate received such a majority of the first choice votes for such office, then a canvass shall be made of the second choice votes received by each candidate for the office; all second choice votes received by any candidate shall then be added to the first choice votes received by said candidate for that office, and the candidate receiving the largest number of first choice and second choice votes combined, if such total votes constitute a majority, shall be elected to said office. If no candidate shall receive a majority of the first choice and second choice votes combined, then a canvass shall be made of the third choice votes received by each candidate for said office, and all third choice votes received by any candidate shall then be added to the total of the first choice and second choice votes for such candidate, and the candidate receiving the largest number of said total first choice, second choice and third choice votes, if such total constitutes a majority, shall be elected to said office; if no candidate shall have such a majority after adding the first choice, second choice and third choice votes, then a canvass shall be made of the other choice votes, received by each candidate for the office and such other choice votes shall then be added to the total of the first choice, second

choice, and third choice votes received by such candidate, and the candidate having the largest number of first choice, second choice, third choice and other choice combined, shall be elected to such office.

A tie vote between two or more candidates shall be decided in favor of the one having the highest number of first choice votes. If they each received an equal number of first choice votes, then the one who received the highest number of second choice votes shall be deemed elected. If they each received the same number of first choice and second choice votes, then the candidate receiving the highest number of third choice votes shall be deemed elected. If they each received the same number of first choice, second choice, third choice and other choice votes, then the tie shall be determined by lot under the direction of the city clerk.

Whenever the word "majority" is used in this section it shall mean more than one-half of the total number of valid ballots cast at such election for the candidates whose election is being canvassed.

Sect. 11. Specimen Ballots to be Published and Posted. The city clerk shall cause specimen ballots to be posted in public places in each ward and voting precinct and advertised in one or more newspapers of Penobscot county not later than ten days prior to the city election and advertised in such newspapers or newspaper at least twice more prior to the election. Such specimen ballots shall be printed on colored paper and marked "specimen ballots" and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to voters, by the legislature, by initiative petition, or by the city council. Such ballots shall be without party mark or designation.

Sect. 12. Recall Provisions. Any member of the city council may be recalled and removed therefrom by the electors of the city as herein provided.

Procedure for Filing Recall Petition. Any voter of the city may make and file with the city clerk an affidavit containing the name or names of the member or members whose removal is sought and a general statement of the reasons why his removal is desired. The clerk shall thereupon deliver to the voter making such affidavit copies of petition blanks for such removal printed forms of which he shall keep on hand. Such

blanks shall be issued by the clerk with his signature and official seal thereto attached; they shall be dated and addressed to the city council, shall contain the name of the persons to whom issued, the number of blanks so issued, and the name of the person or persons whose removal is sought. A copy of the petition shall be entered in a record book to be kept in the office of the city clerk. The recall petition to be effective must be returned and filed with the city clerk within forty-five days after the filing of the affidavit. The petition before being returned and filed shall be signed by voters of the city to the number of at least ten per cent. of the number of registered voters as determined at the time of the last preceding regular municipal election and to every such signature shall be added the place of residence of the signer, giving the street and number or other description sufficient to identify the place. Such signatures need not all be on one paper but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. All such recall papers shall be filed as one instrument, with the endorsements thereon of the names and addresses of three persons designated as filing the same.

Examination and Amendment of Recall Petitions. Within ten days after the filing of the petition the clerk shall ascertain whether or not the petition is signed by the requisite number of voters and shall attach thereto his certificate showing the result of such examination. If his certificate shows the petition to be insufficient, he shall forthwith so notify in writing one or more of the persons designated on the petition as filing the same; and the petition may be amended at any time within the ten days after the giving of said notice, by the filing of a supplementary petition upon additional papers, issued, signed and filed as provided herein for the original petition. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and attach thereto his certificate of the result. If then found to be insufficient, or if no amendment was made, he shall file the petition in his office and shall notify each of the persons designated thereon as filing it of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

Calling of Recall Election. If the petition or amended petition shall be certified by the city clerk to be sufficient he shall submit the same with his certificate to the city council at its next meeting and shall notify the member or members whose removal is sought of such action. The city council shall thereupon, within ten days of the receipt of the city clerk's certificate, order an election to be held not less than forty nor more than sixty days thereafter; provided that if a regular municipal election is to occur within ninety days after the receipt of said certificate, the city council may in its discretion provide for the holding of the removal election on the date of such other regular municipal election. The removal election shall be called and held and nominations made as in other elections under this charter except for the specific limitations of this section.

Form of Ballot in Recall Election. Unless the member or members whose removal is sought shall have resigned within ten days after the receipt by the city council of the city clerk's certificate, the form of the ballot at such election shall be as nearly as may be: "Shall A be recalled? Shall B be recalled." etc., the name of the member or members whose recall is sought being inserted in place of A, B, etc., and the ballot shall also contain the names of the candidates nominated in place of the men recalled, as follows: "Candidates for the place of A, if recalled; Candidates for the place of B, if recalled," etc. but the men whose recall is sought shall not themselves be candidate upon such a ballot. The names shall be arranged as provided in section eight hereof.

In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official he shall be thereby removed, and in that event the candidate to succeed him for the balance of the unexpired term shall be determined as provided in sections nine and ten hereof.

If the person or persons sought to be removed shall have resigned within ten days after the receipt by the city council of the city clerk's certificate referred to in this section above, the form of ballot at the election shall be the same, as nearly as may be, as the form in use at a regular municipal election and all other procedure shall be the same.

Procedure on Refusal of City Council. Should the city council fail or refuse to order an election as herein provided,

such election may be ordered by any justice of the supreme judicial court.

Section 13. State Laws Not Inconsistent Applicable. The provisions of the laws of the State of Maine relating to the qualifications of electors, registration, the manner of voting, the duties of election officers, and all other particulars in respect to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all municipal elections of Old Town except as otherwise provided in this charter.

ARTICLE VI

ADMINISTRATIVE OFFICERS

Section 1. Title and Appointment. There shall be the following administrative officers and boards appointed as hereinafter designated:

(a) The following officers and boards shall be appointed by ballot by a majority vote of the members of the city council: city manager; school board as provided for in Article IV of this charter; trustees of the water district; trustees of the Herbert Gray School district, as provided for by Chapter seventy-eight of the Private Acts of nineteen hundred and twenty-five; associate members of board of registration, and city attorney.

(b) The following officers and boards shall be appointed by the city manager: city clerk, city auditor, city marshal, city treasurer and collector of taxes, city engineer, city physician, city electrician, chief engineer of the fire department, superintendent of sewers, inspector of buildings, sealer of weights and measures; health officer and inspector of milk; superintendent of streets; assessors of taxes, as provided for in section ten of this article; patrolmen; members of the fire department; all other department heads whose position may be created, and, except as herein otherwise provided, all minor officers and employees.

Sect. 2. Power of Council with Regard to Appointive Officers and Boards. The council shall have power by ordinance or resolve:

(a) To create any new appointive office.

(b) To authorize the appointment of assistants or deputies in any office.

Sect. 3. Civil Service Rules for Police and Fire Department. The city council may provide by ordinance for a system of civil service rules for the appointment, promotion, demotion, lay-off, reinstatement, suspension and removal of the members of the police department and of the fire department, other than the chief of said departments, and for a civil service commission to administer the same.

Sect. 4. Term of Service. All appointive officers whose terms of service are specified herein shall be removable by the appointing powers, only upon written charges, notice and hearing, if upon such hearing they are adjudged guilty of the charges preferred.

All other appointive officers shall hold office during the pleasure of the appointing power, except that the term of office of members of the board of registration of voters shall be as provided by law.

Sect. 5. Compensation of Officers. The city council shall fix by order the salaries of the appointees of the city council, Salaries of the appointees of the city manager shall be fixed by the city manager, subject to the approval of the city council.

Sect. 6. Appointment and Qualifications of the City Manager. The city manager shall be chosen by the city council solely on the basis of his character and his executive and administrative qualifications, and may or may not be a resident of the city of Old Town or of the State of Maine, at the time of his appointment.

Sect. 7. Powers and Duties of the City Manager. The city manager shall be the executive and administrative head of the city and shall be responsible to the city council for the administration of all departments. The powers and duties of the city manager shall be as follows:

(a) To see that the laws and ordinances are enforced, but he shall delegate to the chief of the police department the active duties connected therewith regarding crimes and misdemeanors.

(b) To exercise control over all departments and divisions created herein or that may hereafter be created.

(c) To make appointments as provided in this charter.

(d) To assign the duties of two or more officers to one officer.

(e) To divide the duties of any office between two or more offices.

(f) To attend meetings of the city council, except when his removal is being considered, and recommend for adoption such measures as he may deem expedient.

(g) To keep the city council fully advised as to the business and financial condition and future needs of the city and to furnish the city council with all available facts, figures and data connected therewith, when requested.

(h) To perform such other duties as may be prescribed by this charter or required by ordinance of the city council.

Sect. 8. Substitute. During any vacancy in the office of city manager, and during the absence or disability of the city manager, the city council may designate a properly qualified person to perform the duties of manager and fix his compensation; while so acting he shall have the same powers and duties as those given to and imposed on the city manager.

Sect. 9. Duties of Administrative Officers Other Than Manager. Duties of administrative officers other than the city manager shall be those prescribed by the city manager. Such duties shall not be inconsistent with the provisions of this charter.

Sect. 10. Assessors of Taxes. There shall be three assessors of taxes appointed for terms of three years by the city manager and until their successors are appointed and qualified, except that the first city manager to be appointed under this charter shall appoint three assessors for one, two and three years respectively, and until their successors are appointed and qualified. If for any reason a vacancy shall exist in the membership of the board of assessors, the vacancy shall be filled forthwith by the city manager for the unexpired term. The assessors appointed as above provided shall exercise the same powers and be subject to the same duties and liabilities that similar officers of the several towns and cities in the state may exercise, and may now or hereafter be subject to under the laws of the state.

Section 11. Health Officer. The health officer shall be given the same powers and authority and shall be subject to the same duties and liabilities as are now held by or imposed upon the health officer and board of health for the city of Old

Town and he shall perform such other duties, not inconsistent with the law of the state, as the city council shall determine.

ARTICLE VII

BUSINESS AND FINANCIAL PROVISIONS

Section 1. Accounts and Records. Accounts shall be kept by the auditor, showing the financial transactions of all departments of the city. Forms for all such accounts shall be prescribed by the auditor, with the approval of the city manager. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The auditor shall furnish to the city manager, prior to the first regular meeting of the city council in each month, a report containing in detail the receipts and disbursements of the city on all accounts, the expenditures made and the obligations incurred during the preceding calendar month and a balance sheet showing the financial condition of the city, of the several funds, and the total unexpended balance to the credit of each department.

Sect. 2. All the accounts of the city shall be audited annually by a certified accountant to be chosen by the city council.

Sect. 3. Reports. The auditor shall publish each month a statement of the financial condition of the city. Each of the administrative officers and boards shall annually, on such a date as may be fixed by the city council, render to the city manager a full report of the transactions of his or their department for the year. On the basis of these reports, the city manager shall prepare and publish an annual report for general distribution. In addition to a summary of the services rendered by the various departments, the report shall show:

(a) Receipts classified according to sources.

(b) Expenditures classified according to objects. The classification of receipts, and expenditures in the report shall conform in general to the classification in the auditor's books.

(c) Balance sheets.

(d) Such other financial information as may be required by the city council.

Sect. 4. Annual Budget. Not later than one month after the beginning of the fiscal year, the city manager shall submit to the city council, budget estimates for the ensuing fiscal

year. This budget shall be compiled from detailed information furnished by the administrative officers and boards on blanks, the forms of which shall be designated by the city manager, and shall contain:

- (a) Exact statement of the financial condition of the city.
- (b) Itemized statement of appropriations recommended for current expenses, and for permanent improvements; with comparative statements in parallel columns of expenditures for the current and next preceding fiscal year. An increase or decrease in any item shall be indicated.
- (c) Itemized statement of estimated revenue from all sources, other than taxation; and a statement of taxes required, with comparative figures from the current and next preceding year.
- (d) Such other information as may be required by the city council.

The budget shall be published not later than two weeks after its submission to the city council. The city council shall fix a time and place for holding a public hearing upon the budget, and shall give a public notice of such hearing, which shall be at least ten days before the final passage of the appropriation resolve.

Sect. 5. Appropriation Resolve. As early as practicable after the beginning of the fiscal year, the city council shall pass an annual appropriation resolve, which shall be based on the budget submitted by the city manager. The total amount appropriated shall not exceed the estimated revenue of the city.

Before the annual appropriation resolve has been passed the city council may make appropriations for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force.

Sect. 6. Transfers. The city council in the appropriation resolve shall provide for a reserve fund from which transfers shall be made only by vote of the city council, and no transfers of any money shall be made from any fund other than this reserve fund until the end of the fiscal year, at which time after all warrants have been paid out of the various funds against which such warrants have been drawn, the auditor shall trans-

fer to the reserve fund any balances or balance then remaining in the various other funds; except balances in the school fund; the council may then authorize a transfer from the reserve fund to any other fund in which there is an overdraft created by any actual emergency.

The city council shall then transfer the remaining balance then in the reserve fund to the sinking fund of the city; provided, however, that the city council may, in special cases, continue any particular fund without transfer temporarily pending the completion of expenditures, in process or in contemplation. Provided, further, that when and in case the occasion ceases to exist for maintaining a sinking fund as provided for by section 10 of this article the portion of this section relating to the transfer of the reserve fund to the sinking fund shall cease to be in effect.

Sect. 7. Borrowing. The borrowing of money by and for the city shall be limited as to form and purpose by the provisions of section eight and section nine of article seven of this charter. The credit of the city shall in no manner be loaned to any individual, association or corporation.

Sect. 8. Bond Issue. Money may be borrowed within the limits fixed by the constitution and statutes of the state now or hereafter applying to said Old Town by the issue and sale of bonds or notes pledged on the credit of the city, and proceeds to be used for the payment of indebtedness of the city contracted for the acquisition of land, the construction and equipment of buildings, the construction of streets and roads, and other permanent public improvements, and the payment or refunding of bonds, notes and certificates of indebtedness previously issued. No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in two public places in the city of Old Town, and publishing said notice in at least two newspapers published in said Penobscot County at least two weeks before the final action by the city council, and the approval of five-sevenths of all the members of the city council. Every issue of bonds shall be payable within a fixed term of years; if said bonds are issued in payment of indebtedness incurred for a permanent improvement the term of such bonds shall not exceed the estimated period of utility of said improvement but the declaration of the city council embodied in the order authorizing the

issue shall be conclusive determination of the estimated period of utility thereof; and the term within which all bonds shall be made payable shall in no case exceed thirty years. Bonds issued after the adoption of this charter shall be made payable in equal, annual, serial installments as pertains to principal, and interest shall be made payable semi-annually. Every order for the issue of bonds shall provide for a tax levy for each year of an amount necessary to meet the payment of the annual, serial installment of principal and interest; and such amounts shall be included in the tax levy for each year until the debt is extinguished; provided, however, that bonds issued to refund any indebtedness of the city of Old Town existing prior to the adoption of this charter or bonds issued to refund such bonds shall not be subject to the aforesaid requirement of being made payable in equal, annual, serial installments.

Sect. 9. Temporary Loans. Money may be borrowed in anticipation of receipts from taxes during any fiscal year after said fiscal year begins, but the aggregate amount of such loans outstanding at any one time shall not exceed eighty per cent. of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of receipts from taxes for the fiscal year in which said loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be paid within one year and are subject to the provisions of laws of the State of Maine in relation thereto. This section shall not limit in any way the power granted to towns and cities to borrow money as contained in chapter five, section eighty-three of the revised statutes and acts amendatory thereof and additional thereto.

Sect. 10. Sinking Fund. Until the bonded indebtedness of the city of Old Town in force at the time of the adoption of this charter together with any renewals thereof is fully paid, the city council shall raise and set apart each year for a sinking fund a fund not less than two per cent. of the total amount of appropriations for that year. The sinking fund shall be applied only to the payment of that bonded indebtedness of the city, the payment of which has not been provided for by payments in serial installments. The sinking fund shall be in-

vested as provided by the revised statutes of the State of Maine and all acts in addition thereto and in amendment thereof.

Sect. 11. Payments. Money shall be paid out only on warrants on the city treasury issued by the auditor and countersigned by the city manager and a member of the city council to be designated from time to time by said city council. The auditor shall examine all pay-rolls, bills, and other claims and demands against the city, and shall issue no warrant for payment until he finds that the claim is in proper form, correctly computed, duly certified and legally due and payable.

The auditor may require any claimant to make oath to the validity of his claim, may investigate any claim, and for each purpose or purposes may examine witnesses under oath.

Sect. 12. Bonds of Officers. The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursements of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for said bonds to be paid by the city.

Sect. 13. Collection and Custody of City Moneys. All moneys received by an officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the city treasurer with some responsible banking institution or institutions to be chosen by said city council. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city.

Sect. 14. Purchasing of Supplies. The purchasing agent shall purchase all supplies for the city and for the several officers and boards thereof, excepting for supplies for the city schools, which school supplies he shall purchase only upon requisition by the school board.

The purchasing agent shall see to the delivery of supplies to each officer and department to whom they belong, and take and file receipts therefor. He shall conduct all sales of property belonging to the city which are unfit or unnecessary for the city's use, but only after such sale has been authorized by

the city council, and subject to such restrictions as the city council may by ordinance provide.

The city manager shall act as purchasing agent until the city council by ordinance shall provide for the appointment of a purchasing agent.

ARTICLE VIII PUBLIC UTILITIES

Section 1. Franchises. All public franchises, hereafter granted, and all renewals, amendments, and extensions thereof shall be granted or made only by a five-sevenths vote of the members of the council. No franchise and no renewal or amendment thereof shall be granted or made within three months after the application therefor is filed with the city clerk nor within thirty days after the publication in full of the proposed franchise in its final form, nor until a public hearing has been held thereon. No public utility franchise shall be transferable except with the approval of the city council.

Sect. 2. Right of Regulation. All orders providing for grants, renewals, amendments or extensions of public utility franchises shall retain to the city the following rights:

(a) To repeal the same by order at any time for non-use, or for failure to begin construction within the time prescribed, or for failure to otherwise comply with the terms prescribed.

(b) To require proper and adequate extension of plant and service, and the maintenance of the plant and fixtures at the highest practicable standard of efficiency.

(c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates.

(d) To impose such other regulations as may be conducive to the safety, welfare and accommodation of the public.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 1. No Personal Interest. No city manager, no member of the city council, no subordinate city officer, no member of any board or commission charged with the expenditure of any money appropriated by the city council or be-

longing to the city, no officer or employee of the city, elected or appointed, shall be interested, directly or indirectly in any contract entered into by or in behalf of the city of Old Town for work or material, or the purchase thereof, to be furnished to or performed for the city, and all contracts made in violation hereof are void and the city treasurer is expressly forbidden to pay any money out of the city treasury on account of any such contract. No such officer or employee, except a policeman or fireman, shall accept or receive from any person, firm or corporation acting under a franchise or license from the city, any frank, free pass, free ticket, or free service, or accept directly or indirectly from any such person, firm or corporation, any service upon terms more favorable than those granted to the public generally. This provision shall not apply, however, to any free service now or hereafter provided for by contract, franchise or ordinance.

Sect. 2. Referendum, Date of Meeting, Form of Question, Procedure. This act shall be submitted for approval or rejection to the qualified voters of the city of Old Town at an election to be held the second Monday in September in the year A. D. nineteen hundred and thirty-one and warrants shall be issued for such election in the manner now provided by law for the holding of municipal elections, notifying and warning the qualified voters of said city to meet in the several ward meetings of said city, there to cast their ballot concerning a new charter for the city of Old Town. The vote shall be taken by ballot at said election in answer to the question: "Shall an act passed by the legislature in the year nineteen hundred and thirty-one entitled 'An Act to Grant a New Charter to the City of Old Town' be accepted?" which shall be printed on the official ballots and at said election the voters of said city in favor of accepting this act shall vote "Yes" and those opposed shall vote "No."

Otherwise said ballot shall be in the form provided by law when a constitutional amendment is submitted to the vote of the people. The provisions of law relating to the preparation of voting lists for municipal elections shall apply to such election and said election shall in all other respects be conducted by law, and the results thereof shall be determined in the manner now provided by law for the determination of the election of mayor. If a majority of the valid ballots deposited

as aforesaid shall favor accepting the same, then this act shall forthwith take effect as herein provided.

Sect. 3. Date When Effective. So much of this act as authorizes the submission of the acceptance of this charter to the voters of the city of Old Town shall take effect as provided in the constitution of the state, but it shall not take further effect unless adopted by the voters of the city of Old Town as hereinbefore provided. If adopted by the voters of the city, then this act for the purpose of nominating and electing officers hereunder shall take effect on the date of its adoption by the voters, and for all other purposes this act shall take effect on the first Monday in January in the year nineteen hundred and thirty-two.

Sect. 4. Ordinances Not Inconsistent Continued in Force. All ordinances in force at the time when this charter takes effect, not inconsistent with the provisions of this charter, shall continue in force until amended or repealed.

All rules and regulations of the municipal officers of the city of Old Town in force at time when this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

Sect. 5. Existing Contracts Not Invalidated, Unless Inconsistent. All rights, actions, proceedings, prosecutions, and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent herewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Sect. 6. Term of Office, Officers, Boards. All officials, officers, trustees, members of departments, hereafter to be appointed or elected under the provisions of this charter by the city manager or city council, whose term of office has not been herein otherwise provided for, shall not serve out their present terms, but shall continue in office only until their successors are appointed or elected, and qualified, as provided in this act. The term of office of the present members of the board of overseers of the poor, board of health, park commission and cemetery board shall terminate on the first Monday in January, nineteen hundred and thirty-two.

Sect. 7. Acts Repealed. In case this act is approved in the manner hereinbefore provided, all acts and parts of acts inconsistent herewith are hereby repealed.