

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 284

H. P. 195

House of Representatives, January 24, 1967

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Richardson of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT to Provide a Council-Manager Charter for the Town of Cumberland.

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

COUNCIL-MANAGER CHARTER OF THE TOWN OF CUMBERLAND

ARTICLE I

Grant of Powers to the Town

Sec. 1. Incorporation. The inhabitants of the Town of Cumberland, within the limits as now established or as hereafter established in the manner provided by law, shall be a municipal corporation, by the name of the Town of Cumberland, Maine.

Sec. 2. Powers and duties. The town shall 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, pertaining to or incumbent upon said town as a municipal corporation or to the inhabitants or municipal authorities thereof; and may enact reasonable bylaws, 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, not exceeding \$100 in any one case, to be recovered for such uses as said bylaws, regulations or ordinances shall provide.

The administration of all the fiscal, prudential and municipal affairs of said town, with the government thereof, except the general management, care, conduct and control of the schools of said town, which shall be vested in a board of school directors of School Administrative District No. 51, and also except as otherwise provided by this charter, shall be and are vested in one body of 7

members, which shall constitute and be called the town council, all of whom shall be inhabitants of said town, and shall be sworn in the manner hereinafter prescribed.

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, lease or condemnation and may sell, lease, mortgage, hold, manage and control such property as its interest may require.

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the town would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the town may have all the powers necessary or convenient for the conduct of its municipal affairs, including all powers the town may assume pursuant to state laws and to the provisions of the State Constitution.

ARTICLE II

Town Council

Sec. 1. Number, election, term. The town council, hereinafter called the "council," shall be composed of 7 members, each of whom shall be elected by the registered voters of the entire town. Each member shall be elected for a term of 3 years and until his successor is elected and qualified, except that, at the first election after the adoption of this charter, the 3 members-elect receiving the most votes shall serve 3 years, the 2 members-elect receiving the next highest number of votes shall serve 2 years, and the 2 members-elect receiving the next highest number of votes shall serve for one year. In case of an equal number of votes, the relative position of the members-elect shall be determined by lot.

Sec. 2. Qualifications. Councilmen shall be qualified voters of the town and shall reside in the town during their term of office. They shall hold no office of emolument or profit under the town charter or ordinances. In case of a vacancy caused by death, resignation, removal from the town, or removal from office as hereinafter provided, of any member of the town council more than 6 months prior to the next regular municipal election, the vacancy shall be filled by a special election for the unexpired portion of the term. In the event such vacancy occurs less than 6 months prior to the next regular municipal election, the vacancy may be filled by a special election for the unexpired portion of the term. Such election shall be called and held and nominations made as in regular municipal elections.

Any member of the council who shall be convicted of a felony or a misdemeanor involving moral turpitude while in office shall, after due notice and hearing before the council and the production of the records of such conviction, forfeit his office.

Sec. 3. Enumeration of powers. Without limitation of the foregoing, the council shall have power to:

I. Appoint annually and remove for cause after hearing, the town manager and the town assessor. Appoint a town attorney who shall serve at the will of

the council. Appoint and remove for cause after hearing, the members of the planning board and the board of zoning appeals which shall have such powers and perform such duties as are provided by the laws of the State of Maine.

II. Create by ordinance, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter. The council by ordinance may assign additional functions or duties to offices, departments or agencies established by this charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this charter to a particular office, department or agency. The council may, however, vest in the town manager all or part of the duties of any office under this charter.

III. Make, alter and repeal ordinances, including the power to enact ordinances providing for the grant of licenses and permits for the conduct of any business, as set forth in the statutes of the State of Maine, for such periods of time and in accordance with such rules and regulations not inconsistent with law and upon payment by the licensee of such fees as the council may establish in such ordinance.

IV. Inquire into the conduct of any office, department or agency of the town and make investigation as to municipal affairs.

V. Adopt, modify and carry out plans proposed by the planning board.

VI. Recommend the annual budget.

VII. Provide for an annual audit.

VIII. Exercise all the powers formerly vested in the annual town meeting.

Sec. 4. Compensation. Councilmen shall receive \$10 for each council meeting upon attendance not to exceed in the aggregate \$300 per year in full for their services. Such compensation may be changed by vote on an article contained in a warrant for said purpose at any special town meeting. The council by order shall fix the salaries of officials appointed by the council, including the salary of the town manager for his services as such and for all other services rendered by him. Salaries of the appointees of the town manager shall be fixed by the town manager, subject to approval of the council.

Sec. 5. Induction of council into office. The council shall meet at the usual place for holding meetings within 5 days following the regular town election, and at said meeting councilmen-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the town clerk.

Sec. 6. Council to judge of qualifications of its members. The council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and require production of records, but the decision of the council in any such case shall be subject to review by the courts.

Sec. 7. Regular meetings. The council shall, at its first meeting or as soon thereafter as possible, establish by resolution a regular place and time for holding

its regular meetings, and shall meet regularly at least once a month. It shall also provide a method for calling special meetings.

Sec. 8. Rules of procedure; journal. The council shall determine its own rules and order of business. It shall keep a record of its proceedings and the record shall be open to public inspection.

Sec. 9. Chairman. At its first meeting or as soon thereafter as practicable, the council shall elect, by majority vote of the entire council, one of its members for the ensuing year as chairman and the council may fill, for an unexpired term, any vacancy in the office of chairman that may occur. The chairman shall preside at the meetings of the council, and shall be recognized as head of the town government for all ceremonial purposes and by the Governor for purposes of military law, but he shall have no regular administrative duties. 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. In the temporary absence or disability of the chairman, the council may elect a chairman pro tempore, from among its members, and he shall exercise all the powers of chairman during such temporary absence or disability of the chairman.

Sec. 10. Quorum. A majority of the council shall constitute a quorum for the transaction of business but in the event that 4 members only are present, action by such members must be unanimous. A smaller number may adjourn from time to time or may compel attendance of absent members. At least 24 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.

Sec. 11. Public hearing on ordinances. At least one public hearing, notice of which shall be given as hereinafter provided, shall be held by the council before any ordinance shall be passed, but nothing contained herein shall be deemed to require publication of the ordinance itself. The passage of such ordinance shall not be effective until 30 days after such enactment.

The council may, by vote of 5 of its members, pass emergency ordinances, to take effect at the time indicated therein. Such emergency ordinances shall contain a section in which the emergency is set forth and defined; provided, however, that the declaration of such emergency by the council shall be conclusive.

Sec. 12. Clerk of the council. In addition to the statutory duties required of the town manager, he shall act as clerk of the council and shall keep a public record of all proceedings of the council, including all votes.

Sec. 13. Special town meetings and notice. The council shall have power by vote of 5 of its members to call special town meetings in accordance with the provisions of the statutes of the State of Maine. Notice of special town meetings and public hearings under this charter shall be given at least 7 days in advance by publication in a newspaper or newspapers having a general circulation in the town and by posting copies of said notice at the town hall and such other places as the council shall designate. The council in its discretion may cause copies of said notice to be mailed, postage prepaid, to interested persons in the town.

Sec. 14. Independent annual audit. Prior to the end of each fiscal year, the council shall designate the State Department of Audit or private certified public accountants who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the town government and shall submit their report to the council and the town manager. Such accountants shall not maintain any accounts or records of the town business, but shall post-audit the books and documents kept by any office, officer, department or agency of the town government.

ARTICLE III

Town Manager

Sec. 1. Appointment; qualifications; powers and duties. The town manager shall be chosen by the council so'ely on the basis of his character and his executive and administrative qualifications, and may or may not be a resident of the Town of Cumberland or of the State of Maine at the time of his appointment. He shall be tax collector, overseer of the poor, road commissioner and shall have and exercise all powers and perform all the duties conferred or imposed by law upon said respective offices. No councilman shall receive appointment to the office of town manager during the term for which he shall have been elected, nor within one year after the expiration of his term, nor shall any member of the council act in that capacity. The town manager shall give bond for the faithful discharge of his duties to the Town of Cumberland in such sum as the council shall determine and direct, and with surety or sureties to be approved by the council. The premium on his bond shall be paid by the town. He shall be the administrative head of the town and shall be responsible to the council for the administration of all departments assigned to him. His powers and duties shall be as follows:

I. Appoint the town clerk, town treasurer, police chief and fire chief and prescribe their duties. All of such officers shall serve at the will of the town manager.

II. Prepare the annual budget, submit it to the council and be responsible for its administration after adoption.

III. Prepare and submit to the council as of the end of the fiscal year a complete report on the finances and administrative activities of the town for the preceding year, and cause such annual town report to be published and made available to the public as promptly as possible after the close of the fiscal year.

IV. Attend the meetings of the council, except when his removal is being considered, and keep the council advised of the financial condition and future needs of the town and make such recommendations as may seem to him advisable.

V. See that all laws and ordinances governing the town are faithfully administered.

VI. Act as purchasing agent for all departments of the town.

VII. Perform such other duties as may be prescribed by this charter or required of him by the council, not inconsistent with this charter.

VIII. Prepare an administrative code, submit it to the council and be responsible for its administration after adoption.

Sec. 2. Removal. The town manager may be removed for cause by the council in accordance with the provisions of the statutes of the State of Maine relating to the removal of a town manager.

Sec. 3. Department heads. All statutory officers and department heads, other than those listed in Article II, section 3, subsection 1, shall be appointed by the town manager.

Sec. 4. Council not to interfere in appointments or removals. Neither the council nor any of its members shall direct or request the appointment of any person to or his removal from office by the manager or by any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager, and neither the council nor any member thereof shall give orders to any subordinates of the manager, either publicly or privately.

Sec. 5. Vacancy in office of town manager. During any vacancy in the office of town manager, and during the absence or disability of the town manager, the council shall designate a properly qualified person, not a member of the council, 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 town manager. Before entering his duties, he shall give bond to the Town of Cumberland in a sum and with surety or sureties to be approved by the council. The premium on said bond shall be paid by the town.

ARTICLE IV

School Administrative District

Sec. 1. The management of public schools. The management of the public schools of the Town of Cumberland shall be vested in School Administrative District No. 51, in accordance with the statutes of the State of Maine.

Sec. 2. Qualifications for the board of school directors. The members of the board of school directors of School Administrative District No. 51, representing the Town of Cumberland, shall be qualified voters of the town and shall reside in the town during their term of office. They shall hold no office of emolument or profit under the town charter or ordinances. In the event of a vacancy in the town's representatives to the board of school directors, the council shall appoint a director to fill the vacancy until the next regular town election.

ARTICLE V

Budget

Sec. 1. Fiscal year. The fiscal year of the town government shall begin the first day of January and shall end on the 31st day of December of each calendar year, or such other fiscal year as the council may decide. Such fiscal years shall constitute the budget and accounting year as used in this charter. The term

“budget year” shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

Sec. 2. Preparation and submission of the budget. The town manager, at least 35 days prior to the beginning of each budget year, shall submit to the council a budget and an explanatory budget message. The budget authority of the council shall be limited to the final determination of the total appropriation to be made to each of the several offices, departments and agencies of the town.

This budget shall contain:

I. Exact statement of the financial condition of the town.

II. An itemized statement of appropriations recommended for current expenses, and for permanent improvements, with comparative statements in parallel columns of estimated expenditures for the current year and actual expenditures for the next preceding fiscal year. An increase or decrease in any item shall be indicated.

III. An itemized statement of estimated revenue from all sources, other than taxation, and a statement of taxes required, comparative figures from current and next preceding year.

IV. Such other information as may be required by the council.

The proposed budget prepared by the manager shall be reviewed by the council which shall approve the budget with or without amendments. The complete town budget as approved by the council shall be printed and distributed and the council shall fix the time and place for holding a public hearing on the budget, and shall give a public notice of such hearing as provided in this charter. The council shall then review the budget and adopt the same, with amendments, if any.

Sec. 3. Budget establishes appropriations. From the date of adoption of the budget, the several amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies and purposes therein named.

Sec. 4. Budget establishes amount to be raised by property tax; certification to town assessor. From the date of adoption of the budget, the amounts stated therein as the amount to be raised by property tax shall constitute a determination of the amount of the levy for the purposes of the town in the corresponding tax year. A copy of the budget as finally adopted shall be certified by the manager and filed by him with the town assessor, whose duty it shall be to levy such taxes for the corresponding tax year.

Sec. 5. Budget summary. At the head of the budget there shall appear a summary of the budget, which need not be itemized, further than by principal sources of anticipated revenue, stating separately the amount to be raised by property tax, and shall be itemized also by departments and kinds of expenditures, in such a manner as to present to taxpayers a simple and clear summary of the detailed estimates of the budget.

Sec. 6. Expenditures and departmental revenue. The budget for all departments shall include all proposed expenditures; and the council shall make

a gross appropriation for each department for the ensuing fiscal year. The gross appropriation for each department shall not be exceeded except by consent of the council.

Sec. 7. Work program; allotments. Before the beginning of the budget year, the head of each office, department or agency shall submit to the town manager, when required by him, a work program of the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The town manager shall review the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The town manager shall review the requested allotments in the light of the work program of the office, department or agency concerned, and may revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total of appropriations available to said office, department or agency for the budget year.

Sec. 8. Transfers of appropriations. At the request of the manager and within the last 3 months of the budget year, the council may by resolution transfer any unencumbered appropriation balance or portion thereof between general classification of expenditures within an office.

Sec. 9. Interim expenditures. In the period between the beginning of the fiscal year and the appropriation of funds, the council may authorize expenditures for current departmental expenses chargeable to the appropriations for the year when made, in amounts sufficient to cover the necessary expenses of the various departments.

ARTICLE VI

Tax Administration

Sec. 1. Assessor. There shall be established a division of assessment, the head of which shall be the town assessor. The assessor, appointed as herinbefore 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.

Sec. 2. Board of assessment review; appointment; vacancies. There shall be a board of assessment review to consist of 3 members, who shall be appointed by the council for a term of 3 years, except that of those first appointed one shall be for a term of 2 years and one for a term of one year. Members may be removed for cause after hearing by the council. Compensation, if any, to such members shall be determined by the council. Vacancies in the membership of such board shall be filled by appointment by the council for the unexpired term.

Sec. 3. Board of assessment review; powers and duties. The board of assessment review shall have the power to:

I. Review, on complaint of property owners, and revise assessments for the purpose of taxation of real and personal property within the town limits made by the town assessor;

- II. Administer oaths;
- III. Take testimony;
- IV. Hold hearings;
- V. Adopt regulations regarding the procedure of assessment review not inconsistent with statutory provisions.

ARTICLE VII

Nominations and Elections

Sec. 1. Municipal elections. The regular election for the choice of members of the council and representatives to the board of school directors shall be held on the first Friday in March. The council may by resolution order a special election at any time to fill vacancies in the council. All such elections shall be conducted on a nonpartisan basis and without party designations on the election ballot.

Sec. 2. Nomination. Any qualified voter of the town may be nominated for the council or as a representative to the board of school directors, either by the use of nomination papers or by political caucus, in accordance with the statutes of the State of Maine.

Sec. 3. Conduct of municipal elections. The provisions of the statutes of the State of Maine relating to the qualifications of voters, the registration of voters, the nomination for any office, the manner of voting, the duties of election officers and all other particulars relative to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all municipal elections, except as otherwise provided in this charter.

Sec. 4. Voting places. The voting places for municipal elections shall be those which have been established for state elections.

Sec. 5. Election officials. The town council shall, 10 days before any election, appoint a warden and a clerk, in addition to the regular ballot clerks, for each voting place.

ARTICLE VIII

The Town Meeting

Sec. 1. Annual and special town meetings. Upon adoption of this charter there shall be no annual town meeting. The council shall have power to call special town meetings pursuant to section 13 of Article II of this charter and in the manner provided for calling town meetings in accordance with the provisions of the statutes of the State of Maine.

ARTICLE IX

Initiative and Referendum

Sec. 1. Petition for overrule of action of council. All ordinances, resolutions or votes, except those making appointments or removals or regulating exclusively

the internal procedure of the council, shall be subject to overrule by a referendum as follows :

If, within 20 days after the enactment of any such ordinance, resolution or vote, a petition signed by not less than 10% of the registered voters of the Town of Cumberland is filed with the town clerk requesting its reference to a referendum, the council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the town clerk and shall, within 14 days after said public hearing, call a special town meeting for the purpose of submitting to a referendum vote the question of adopting such ordinance, resolution or vote. Pending action by the town meeting, the referred ordinance, resolution or vote shall be suspended from going into operation until it has received an affirmative vote of the majority of the voters voting on said question.

Sec. 2. Petition for enactment of ordinances. Subject to the provisions of section 1, not less than 10% of the registered voters of the town may at any time petition over their personal signatures for the enactment of any proposed lawful ordinance by filing such petition, including the complete text of such ordinance, with the town clerk. The council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the town clerk, and shall within 30 days after said public hearing call a special town meeting for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the call for said town meeting, such ordinance shall be enacted by the council. Such ordinance shall take effect on the 10th day after the conclusion of such referendum, provided a majority of those voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by the town attorney before being submitted to referendum. The town attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clearness and preciseness in its phraseology, but he shall not materially change its meaning and effect.

Sec. 3. Petition for submission of amendments of charter to the Legislature. Not less than 10% of the registered voters of the town may at any time petition, over their personal signatures, for the submission of an amendment of this charter to the next regular session of the Legislature by filing such petition at least 90 days prior to the next regular session of the Legislature, including the complete text of such amendment, with the town clerk. The council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the town clerk, and shall within 14 days after said public hearing call a special town meeting for the purpose of submitting to a referendum vote the question of the enactment of such charter amendment. If at such special town meeting a majority of the voters of the town voting on the question shall vote in favor of said amendment, the council shall prepare and submit a bill to the next regular session of the Legislature for the enactment of such charter amendment.

Sec. 4. Form of ballot. The form of ballot for the proposed ordinance, resolution, vote or charter amendment shall be substantially as follows :

“Shall the proposed ordinance (resolution, vote or charter amendment), a copy of which is printed herein or attached hereto, be adopted?”

For the Ordinance:

Against the Ordinance:



The voter shall write a cross or check mark in the appropriate box.

ARTICLE X

General Provisions

Sec. 1. Repealing clause. All Acts and parts of Acts of the private and special laws of Maine relating to the Town of Cumberland, inconsistent with the provisions of this charter, are repealed.

Sec. 2. Separability clause. If any portion of this Act shall be held to be invalid, such decision shall not affect the validity of the remaining portions thereof.

Sec. 3. Short title. This charter shall be known and may be cited as the “Council-Manager Charter of the Town of Cumberland.” The clerk shall cause it to be printed and made available to the public promptly.

Sec. 4. Expiration term of present elected officials. The term of the present elected town officials shall expire at the annual meeting in March, 1968.

Sec. 5. Existing contracts not invalidated, unless inconsistent. All rights, actions, proceedings, prosecutions and contracts of the town 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.

Sec. 6. Summons before council. The clerks of the Supreme Judicial and Superior Courts may issue a summons for witnesses to attend and produce books, documents and papers at any meeting of the council for the Town of Cumberland at which a hearing is had in any matter regarding any alleged dereliction of duty by town officers or employees, on complaint of failure to obey summons filed with any Justice of the Superior Court, said justice, if he finds failure to obey such summons to be without reasonable excuse, shall impose a fine of not less than \$10 nor more than \$100, or imprisonment for not more than 30 days, or both.

Sec. 7. Oath of office. Every officer of the town shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the town clerk:

“I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of Maine; that I will, in all respects, observe the provisions of the charter and ordinances of the Town of Cumberland and statutes of the State of Maine, and will faithfully discharge the duties of the office of”

Sec. 8. Ordinances not inconsistent continue in force. All ordinances of the Town of Cumberland 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.

Sec. 9. Removal of officers and employees. Any statutory officer, department head or employee appointed by the town manager may be removed by him at any time. The decision of the town manager shall be final and there shall be no appeal therefrom to any other appointing body, officer or court.

Sec. 10. Continuance of present administrative officers: All persons holding administrative office at the time this charter takes effect shall continue in office and in the performance of their duties until provisions shall have been made in accordance therewith for the performance of such duties or the discontinuation of such office.

Sec. 11. Referendum; effective date; certificate to Secretary of State. This Act shall take effect 90 days after adjournment of the Legislature, only for the purpose of permitting its submission to the legal voters of the Town of Cumberland at any special town meeting or state-wide election held before January 1, 1968, and warrants shall be issued for such town meeting in the manner now provided by law for the holding of municipal elections, notifying and warning the qualified voters of said town to meet in said town, there to cast their ballots on the approval or rejection of this Act.

The town clerk shall prepare the required ballots, on which he shall reduce the subject matter of this Act to the following question:

“Shall ‘An Act to Grant a New Charter to the Town of Cumberland’, passed by the 103rd Legislature, be accepted?”

The voters shall indicate by a cross or check mark placed against the word “Yes” or “No” their opinion of the same. This Act shall take effect for the purpose of nominating and electing officers hereunder immediately upon its acceptance by a majority of the legal voters voting at said election, and for all other purposes this Act shall take effect immediately following the first election held under the provisions of this charter at the annual meeting in March, 1968.

The result of the vote shall be declared by the municipal officers of the Town of Cumberland and due certificate thereof shall be filed by the town clerk with the Secretary of State.