

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND THIRD LEGISLATURE

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**Legislative Document**

**No. 768**

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H. P. 521 House of Representatives, February 8, 1967  
Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Dennett of Kittery.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-SEVEN

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### **AN ACT to Grant a New Charter to the Town of Kittery.**

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

#### **COUNCIL-MANAGER CHARTER OF THE TOWN OF KITTERY**

##### **ARTICLE I**

##### **Grant of Powers to the Town**

###### **Sec. 1.01. Incorporation**

The inhabitants of the Town of Kittery, within the limits as now established or as hereinafter established in the manner provided by law, shall continue to be a body politic and corporate by the name of the Town of Kittery, and 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.

###### **Sec. 1.02. Construction.**

The powers of the town under this charter shall be construed liberally in favor of the town, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power stated in this article.

**Sec. 1.03. Intergovernmental relations.**

The town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more municipalities, states or civil divisions or agencies thereof, or the United States or any agency thereof.

**ARTICLE II****Town Council****Sec. 2.01. Officers.**

The members of the town council shall be and constitute the municipal officers of the Town of Kittery 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 under the laws of this State.

**Sec. 2.02. Composition and eligibility.**

1. **Composition.** The town council shall be composed of 7 members, elected at large by the qualified voters of the town.

2. **Eligibility.** Only qualified voters of the town during the period of their residence in the town who at all times during their term of office shall be and remain residents of the town shall be eligible to hold the office of councilman.

**Sec. 2.03. Election and terms.**

The regular election of council members shall be held on the first Tuesday of October each year in the manner provided in Article X.

Each member shall be elected for a term of 3 years and shall serve until his successor is elected and qualified, except that, at the first election after adoption of this charter, the 3 members-elect receiving the largest number of votes shall serve until October of 1970, the 2 members-elect receiving the next largest number of votes shall serve until October of 1969, and the 2 members-elect receiving the next largest number of votes shall serve until October of 1968. In case any candidates receive an equal number of votes, their relative positions shall be determined by lot.

**Sec. 2.04. Compensation; expenses.**

Council members shall receive \$10 for each council meeting attended, not exceeding in the aggregate \$300 per year for their services, plus their actual and necessary expenses. Such compensation may be changed by ordinance, but no ordinance increasing such compensation shall become effective until the date of commencement of the terms of the councilmen elected at the next regular election, provided that such election follows the adoption of such ordinance by at least 6 months.

**Sec. 2.05. Chairman.**

1. **Election.** 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 to serve as chairman for the ensuing year.

2. **Vacancy.** The council shall fill any vacancy that may occur in the office of chairman, from among its members, for the unexpired term by a majority vote 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 the chairman during such temporary absence or disability of the chairman.

3. **Duties.** The chairman shall preside at meetings of the council, shall be recognized as the head of the town government for all ceremonial purposes and by the Governor for purposes of military law, but he shall have no administrative duties. He shall be entitled to vote on council matters and his vote shall be counted as a vote of the other members of the council.

**Sec. 2.06. General powers and duties.**

All powers of the town shall be vested in the council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the town by law.

**Sec. 2.07. Enumeration of powers.**

1. The council shall have the power to appoint and remove the town manager; and appoint the Port Authority members; and appoint the planning board, the zoning board of appeals, the personnel board, and the board of assessment review from among the qualified, resident voters of the town. The council, and its appointees and appointed boards with the approval of the council, may employ legal assistance in the manner provided by the council.

2. The council shall have the power to enact, alter and repeal ordinances; adopt resolutions, codes and rules; and issue proclamations.

3. The council shall have the power to, by ordinance, create, 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.

4. The council shall provide for an independent annual audit of all town accounts and may provide for such additional audits as it deems necessary. Such audits shall be made by the State Department of Audit or by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the town government or any of its offices.

**Sec. 2.08. Induction of council into office.**

The council shall meet at the usual place for holding meetings on the 3rd Tuesday in November, 1967, and thereafter on the 3rd Tuesday of October each year. At said meetings councilmen-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the town clerk.

**Sec. 2.09. Judge of qualifications.**

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 2.12, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A council member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the Superior Court.

#### **Sec. 2.10. Procedure.**

**1. Meetings.** The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the chairman or of 4 or more members and, whenever practicable, upon no less than 12 hours' notice, as defined by the rules adopted under section 2.10, subsection 2, to each member. All meetings shall be public. However, the council may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the manager or qualified officers and advisors concerned with the matter to be discussed, any matter which would tend to defame or prejudice the character or reputation of any person, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the council until the matter is placed on the agenda.

**2. Rules and journal.** The council shall, by resolution, adopt its own rules and order of business. The town clerk or deputy town clerk shall give notice of special council meetings to its members and to the public, and shall keep a journal of its proceedings. This journal shall be a public record.

**3. Voting.** Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. At least 12 hours' notice of the time and place of holding such adjourned meetings shall be given to all members who were not present at the meeting from which adjournment was taken and to the public. No action of the council, except as otherwise provided in the 2nd sentence of this subsection and in section 2.12, subsection 3, shall be valid or binding unless adopted by the affirmative vote of 4 or more members of the council.

#### **Sec. 2.11. Prohibitions.**

**1. Holding other office.** Except where authorized by law, no councilman shall hold any other office or employment with the school department or in a town department during the term for which he was elected to the council, and no former councilman shall hold any compensated appointive town or school office or employment until one year after the expiration of the term for which he was elected to the council.

**2. Appointments and removals.** Neither the council nor any of its members shall in any manner dictate the appointment or removal of any town administra-

tive officers or employees whom the manager or any of his subordinates are empowered to appoint, but the council may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of such officers and employees.

**3. Interference with administration.** The council or its members shall deal with town officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

**Sec. 2.12. Vacancies; forfeiture of office; filling of vacancies.**

**1. Vacancies.** The office of a councilman shall become vacant upon his death, resignation, removal from office in any manner authorized by law or forfeiture of his office.

**2. Forfeiture of office.** A councilman shall forfeit his office if he

**A.** Lacks at any time during his term of office any qualifications for the office prescribed by this charter or by law,

**B.** Violates any express prohibition of this charter,

**C.** Is convicted of a crime involving moral turpitude, or

**D.** Fails to attend 3 consecutive regular meetings of the council without being excused by the council.

**3. Filling of vacancies.** If for any reason a vacancy shall exist in the membership of the town council more than 6 months prior to the 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 for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article X.

**Sec. 2.13. Action requiring an ordinance.**

In addition to other acts required by law or by specific provisions of this charter to be done by ordinance, those acts of the town council shall be by ordinance which:

**1.** Adopt or amend an administrative code or establish, alter or abolish any town department, office or agency;

**2.** Provide for a fine or establish a rule or regulation by which a fine is imposed;

**3.** Convey or lease or authorize the conveyance or lease of any lands of the town, except that property acquired for nonpayment of taxes;

**4.** Adopt with or without amendment ordinances proposed under the initiative power; and

5. Amend or repeal any ordinance previously adopted, except as otherwise provided in Article XI with respect to repeal of ordinances reconsidered under the referendum power.

Acts other than those referred to in the preceding paragraph of this section may be done either by ordinance or by resolution.

**Sec. 2.14. Ordinances in general.**

**Form.** Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The Town of Kittery hereby ordains . . .". Any ordinance which repeals or amends an existing ordinance or part of the town code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

**2. Procedure.** An ordinance may be introduced by any member at any regular or special meeting of the council. The town clerk shall provide a copy to each council member and to the manager and shall make a reasonable number of copies available in the office of the town clerk, and shall publish in a newspaper of general circulation in the town a notice setting out the time and place for a public hearing thereon. The public hearing shall follow the publication by at least 7 days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard at the hearing. After the hearing, the council may adopt the ordinance with or without amendment or reject it.

**Sec. 2.15. Emergency ordinances.**

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances in the form and manner prescribed for ordinances generally, but such emergency ordinances may not levy taxes or authorize the borrowing of money except as provided in section 6.10, subsection 2. An emergency ordinance may be adopted with or without amendment or rejected, but the affirmative vote of at least 5 members shall be required for adoption. It shall become effective upon adoption or at such later time as it may specify.

Every emergency ordinance, except one made pursuant to section 6.10, subsection 2, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

**Sec. 2.16. Codes of technical regulations.**

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally, except that:

1. The requirements of section 2.14 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

2. A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the town clerk pursuant to section 2.17, subsection 1.

Copies of any adopted code of technical regulations shall be made available by the town clerk for distribution or for purchase at a price fixed by the council.

**Sec. 2.17. Authentication and recording; codification; printing.**

1. **Authentication and recording.** The town clerk shall authenticate by his or her signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council.

2. **Codification.** Within 3 years after adoption of this charter and at least every 10 years thereafter, the council shall provide for the preparation of a general codification of all town ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or looseleaf form, together with this charter and any amendments thereto, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially as the Kittery Town Code. Copies of the code shall be furnished to town officers, place in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

3. **Printing of ordinances and resolutions.** The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the council. Following publication of the first Kittery Town Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein.

### ARTICLE III

#### Town Manager

**Sec. 3.01. Appointment; qualification; compensation.**

The town manager shall be chosen by the council solely on the basis of his character and his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office hereinafter set forth, and may or may not be a resident of the Town of Kittery or of the State of Maine at the time of his appointment. The council shall appoint a town manager for an indefinite term and fix his compensation.

**Sec. 3.02. Removal of manager.**

The town manager may be removed for cause by the council in accordance with the provisions of Maine law.



1. The council shall file with the town clerk a written preliminary resolution setting forth the specific reasons for the proposed removal, a copy of which shall be delivered to the manager within 10 days of filing.
2. The manager may within 20 days of receiving the resolution reply in writing and may request a public hearing.
3. Upon request for a public hearing the council shall hold one not earlier than 10 days after the request is filed nor later than 30 days.
4. After the public hearing, or at the expiration of the time permitted the manager to request the public hearing, if no such request is made, the council may adopt or reject the resolution of removal.
5. The council may suspend the manager from duty in the preliminary resolution but in no event shall the manager's salary be affected until the final resolution of removal has been adopted.
6. In the event of any conflict with the provisions of Maine law concerning the removal of the manager, the provisions of Maine law shall supersede the provisions of this section.

**Sec. 3.03. Vacancy in the office of town manager.**

In the temporary absence or disability of the manager, the manager shall designate, subject to approval of the council, a properly qualified person to perform the duties of the manager and the council shall fix his compensation. While so acting, he shall exercise the powers and perform the same duties of the manager. During such absence or disability, the council may revoke such designation at any time and appoint another qualified person to serve until the manager shall return or his disability shall cease. No member of the council shall be appointed to serve as manager during such absence or disability.

**Sec. 3.04 Powers and duties.**

The town manager shall be the chief administrative officer of the town. He shall be responsible to the council for the administration of all town affairs placed in his charge by or under this charter. He shall have the following powers and duties:

1. He shall appoint and prescribe the duties of all statutory officers and department heads and, when necessary for the good of the service, suspend or remove officers and employees of the town appointed by him, except as otherwise provided by or under this charter or by law. He may authorize the head of a department or office to appoint, suspend or remove subordinates in such department or office in accordance with personnel rules as may be established by ordinance.
2. He shall direct and supervise the administration of all departments, offices and agencies of the town, except as otherwise provided by this charter or by law.
3. He shall attend all council meetings, except when his removal is being considered, and shall have the right to take part in discussion, but may not vote.

4. He shall see that all laws, provisions of this charter and acts of the council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.

5. He shall prepare and submit the annual budget and capital program to the council and be responsible for its administration after adoption.

6. He shall 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 report to be published and made available to the public as promptly as possible after the close of the fiscal year.

7. He shall make such other reports as the council may require concerning the operations of town departments, offices and agencies subject to his direction and supervision.

8. He shall keep the council fully advised as to the financial condition and future needs of the town and make such recommendations to the council concerning the affairs of the town as he deems advisable.

9. He shall act as purchasing agent for all departments of the town, except the school department, and provide, in case of the school department, for cooperative purchasing arrangements where feasible.

10. He shall prepare an administrative code, submit it to the council and be responsible for its administration after adoption.

11. He shall perform such other duties as are specified in this charter or may be required by the council.

12. With the consent of the council, the manager may serve as the head of one or more departments, offices or agencies.

## ARTICLE IV

### Department of Education

#### Sec. 4.01. Superintending school committee.

1. **Composition.** There shall be a superintending school committee, hereinafter referred to as the school committee, of 5 members elected by the qualified voters of the town at large.

2. **Eligibility.** Only qualified voters of the town during the period of their residence in the town, who at all times during their term of office shall be and remain residents of the town, shall be eligible to hold the office of school committeeman.

#### Sec. 4.02. Election and term.

The regular election of school committee members shall be held on the first Tuesday of October each year in the manner provided in Article X.

Each member shall be elected for a term of 3 years and shall serve until his successor is elected and qualified, except that, at the first election after adoption of this charter, the 2 members-elect receiving the largest number of votes shall

serve until October of 1970, the 2 members-elect receiving the next largest number of votes shall serve until October of 1969, and the member-elect receiving the next largest number of votes shall serve until October of 1968. In case any candidates receive an equal number of votes, their relative positions shall be determined by lot.

**Sec. 4.03. Compensation; expenses.**

School committee members shall each be entitled to receive \$100 per year compensation for their services and the committee may provide in its budget for actual and necessary expenses. Such compensation may be changed by ordinance but no ordinance increasing the compensation shall become effective until the date of commencement of the terms of school committee members elected at the next regular election, provided that such election shall follow the adoption of such ordinance by at least 6 months.

**Sec. 4.04. Chairman.**

**Election.** At its first meeting or as soon thereafter as practicable, the school committee shall elect, by majority vote of the entire committee, one of its members to serve as chairman for the ensuing year.

**2. Vacancy.** The school committee shall fill any vacancy that may occur in the office of chairman, from among its members, for the unexpired term by a majority vote of the committee. In the temporary absence or disability of the chairman, the committee may elect a chairman pro tempore from among its members, and he shall exercise all the powers of the chairman during such temporary absence or disability of the chairman.

**3. Duties.** The chairman shall preside at meetings of the school committee. He shall be entitled to vote on school committee matters and his vote shall be counted as a vote of the other members of the committee.

**Sec. 4.05. General powers and duties.**

The school committee shall have all the powers conferred by law and shall perform all the duties imposed by law upon school committees in regard to the care and management of the public schools of the town.

The school committee shall provide for the manner of preparing and submitting the annual school budget in detail to the town manager at least 45 days before the beginning of the fiscal year. The school committee shall also provide for the manner of preparing and submitting to the town manager a complete report on the finances and administrative activities of the school department for the preceding year as promptly as possible after the close of the fiscal year.

**Sec. 4.06. Induction of school committee into office.**

The school committee shall meet at the usual place for holding meetings on the 3rd Monday in November, 1967 and thereafter on the 3rd Monday in October, and at said meeting committeemen-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the town clerk.

**Sec. 4.07. Judge of qualifications.**

The school committee shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office as set forth in section 4.10, subsection 2, and for that purpose shall have the power to subpoena witnesses as provided in section 12.03, administer oaths and require the production of evidence. A school committee member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the town at least one week in advance of the hearing. Decisions made by the council under this section shall be subject to review by the Superior Court.

**Sec. 4.08. Procedure.**

1. **Meetings.** The school committee shall meet regularly at least once in every month at such times and places as the school committee may prescribe by rule. Special meetings may be held on the call of the chairman or of 3 or more members and, whenever practicable, upon no less than 12 hours' notice to each member as defined by the rules adopted under this section, subsection 2. All meetings shall be public. The committee may recess for the purpose of discussing in a closed or executive session, limited to its own membership and the school superintendent or qualified officers and advisors concerned with the matter to be discussed, any matter which would tend to defame or prejudice the character or reputation of any person, provided the general subject matter for consideration is expressed in the motion calling for such a session and that final action thereon shall not be taken by the committee until the matter is placed on the agenda.

2. **Rules and journal.** The school committee shall adopt its own rules and order of business; shall provide for the manner of giving notice of special meetings to its members and to the public; and of keeping a journal of its proceedings. This journal shall be a public record.

3. **Voting.** Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Three members of the school committee shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the school committee. At least 12 hours' notice of the time and place of holding such adjourned meeting shall be given all members who were not present at the meeting from which adjournment was taken. No action of the school committee, except as otherwise provided in the 2nd sentence of this subsection and in section 4.10 shall be valid or binding unless adopted by the affirmative vote of 3 or more members of the committee.

**Sec. 4.09. Prohibitions.**

Except where authorized by law, no school committee members shall hold any other office or employment with the school department or in a town department during the term for which he was elected to the school committee, and no former school committee member shall hold any compensated appointive town or school

office or employment until one year after the expiration of the term for which he was elected to the school committee.

**Sec. 4.10. Vacancies; forfeiture of office; filling of vacancies.**

**1. Vacancies.** The office of a school committee member shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.

**2. Forfeiture of office.** A school committee member shall forfeit his office if he:

**A.** Lacks at any time during his term of office any qualification for the office prescribed by this charter or by law,

**B.** Violates any express prohibition of this charter,

**C.** Is convicted of a crime involving moral turpitude, or

**D.** Fails to attend 3 consecutive regular meetings of the school committee without being excused by the school committee.

**3. Filling of vacancies.** If for any reason a vacancy shall exist in the membership of the school committee more than 6 months prior to the 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 for the unexpired portion of the term by a special election to be called by the municipal officers. Any such special elections shall be conducted in accordance with the provisions of Article X.

## ARTICLE V

### Administrative Departments

**Sec. 5.01. General provisions.**

**1. Creation of departments.** The council shall have power to, by ordinance, create, change and abolish offices, departments and agencies, other than the offices, departments and agencies established by this charter.

**2. Direction by manager.** All departments, offices and agencies under the direction and supervision of the manager may be administered by an officer appointed by and subject to the direction and supervision of the manager.

**Sec. 5.02. Personnel system.**

**1. Merit principle.** All appointments and promotions of town officers and employees, subject to the direction and supervision of the manager, shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.

**2. Personnel director.** The town manager shall be the personnel director.

**3. Personnel board.** There shall be a personnel board consisting of 5 members appointed by the council from among the qualified voters of the town. The

first appointments to this board shall be made in the following manner: Two members for 3 years, 2 members for 2 years, and one member for one year. All succeeding appointments shall be made for terms of 3 years.

**4. Personnel rules.** The personnel director shall prepare personnel rules which the council shall adopt by ordinance with or without amendment. These rules shall provide for:

- A.** The classification of all town positions, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;
- B.** A pay plan for all town positions;
- C.** Methods for determining the merit and fitness of candidates for appointment or promotion, demotion or dismissal;
- D.** The policies and procedures regulating reduction in force and removal of employees;
- E.** A retention and retirement plan for all town employees;
- F.** The hours of work, attendance regulations and provisions for sick and vacation leave;
- G.** The policies and procedures governing persons holding provisional appointments;
- H.** The policies and procedures governing relationships with employee organizations;
- I.** Policies regarding in-service training programs;
- J.** Grievance procedures, including procedures for the hearing of grievances by the personnel board, which may render advisory opinions based on its findings to the town manager with a copy to the aggrieved employee;
- K.** Provide for the manner of identifying and bonding personnel as deemed advisable; and
- L.** Other practices and procedures necessary to the administration of the town personnel system.

## **ARTICLE VI**

### **Financial Procedures**

#### **Sec. 6.01. Fiscal year.**

The fiscal year of the town shall begin on the first day of January and end on the last day of December.

#### **Sec. 6.02. Submission of budget and budget message.**

Thirty-five days before the beginning of the fiscal year, the manager shall submit to the council the complete town budget for all the departments, including the school department budget, for the ensuing fiscal year and an accompanying message.

**Sec. 6.03. Budget message.**

The manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the town for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures and revenues together with the reasons for such changes, summarize the town's debt position and include such other material as the manager deems desirable.

**Sec. 6.04. Budget.**

The budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the manager deems desirable or the council shall require. In organizing the budget the manager shall utilize the most feasible combination of expenditure classifications by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the preceding year. It shall indicate in separate sections:

1. Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;
2. Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure; and
3. The total of proposed expenditures shall not exceed the total of estimated income.

**Sec. 6.05. Capital program.**

1. **Submission to council.** The planning board shall prepare and submit to the council a 5-year capital program at least 3 months prior to the final date for submission of the budget.

2. **Contents.** The capital program shall include:

A. A clear general summary of its contents;

B. A list of all capital improvements which are proposed to be undertaken during the 5 fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;

C. Cost estimates, method of financing and recommended time schedules for each such improvement, and

D. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

**Sec. 6.06. Council action on budget.**

**1. Notice and hearing.** The council shall publish in one or more newspapers of general circulation in the town the general summary of the budget and a notice stating:

**A.** The times and places where copies of the message and budget are available for inspection by the public, and

**B.** The time and place, not less than 2 weeks after such publication, for a public hearing on the budget.

**2. Amendment before adoption.** After the public hearing, the council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income.

**3. Adoption of budget and appropriation.** The council shall adopt the budget on or before the first of January. If it fails to adopt the budget by this date, the amounts appropriated for operations for the previous fiscal year shall be deemed adopted for the current fiscal year on a month-to-month basis, with all items in it pro-rated accordingly, until such time as the council adopts a budget for the current fiscal year. From the date of adoption of the budget, the amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies and purposes therein named. 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.

Adoption of the budget shall constitute adoption of an ordinance appropriating the amounts specified therein from the funds indicated.

**4. Tax Levy.** The tax levy shall be adopted by council resolution.

**Sec. 6.07. Bond issues; ballots.**

All capital projects which the council, by ordinance, proposes to finance through the issuance of bonds must be submitted to the qualified voters of the town at a regular or special election, after public hearings in the manner and form prescribed in section 2.14 and by law, and may become effective 30 days after such election, provided a majority of the voters of the town voting in such election shall have voted in the affirmative.

The town clerk shall prepare the necessary ballots for said election. Such ballots must state at least the following for each project proposed:

**1.** A brief and general description of the proposed capital project;





**5. Limitations; effective date.** No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

**Sec. 6.11. Lapse of appropriations.**

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation shall be deemed abandoned if 3 years pass without any disbursement from or encumbrance of the appropriation.

**Sec. 6.12. Administration of budget.**

**Work programs and allotments.** At such time as the manager shall specify, each department, office or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to section 6.10.

**2. Payments and obligations prohibited.** No payment shall be made or obligation incurred against and allotment or appropriation except in accordance with appropriations duly made and unless the manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this charter shall be void and any payment so made illegal. Such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the town for any amount so paid. However, except where prohibited by law, nothing in this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action was made or approved by ordinance.

## ARTICLE VII

### Tax Administration

**Sec. 7.01. Assessor.**

There shall be established a division of assessment, the head of which shall be the town assessor. The assessor 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 of Maine may exercise and may now or hereafter be subject to under the laws of the State.

**Sec. 7.02. Board of assessment review; appointment; vacancies.**

There shall be a board of assessment review to consist of 3 members, not otherwise connected with the town government, 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. Vacancies in the membership of such board shall be filled by appointment by the town council for the unexpired term.

**Sec. 7.03. Board of assessment review; qualifications.**

All members of the board of assessment review shall be selected upon the basis of their knowledge of the subject of taxation and property values and shall at the time of their appointment have been residents of the town for at least 3 years immediately preceding and shall continue as residents during their term of office.

**Sec. 7.04. Board of assessment review; powers and duties.**

The board of assessment review shall have conferred upon it such powers of review and abatement as are conferred upon boards of assessors by statute, and shall have the power to:

1. 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;
2. Administer oaths;
3. Hold hearings; and
4. Adopt regulations regarding the procedure of assessment review, not inconsistent with statutory provisions.

The board shall be required to keep an accurate record of all its proceedings, and this record will be available for public inspection.

**Sec. 7.05. State statutes.**

In the event of any conflict in the provisions of this Article VII with the provisions of any present or future statute relating thereto, the provisions of the statute shall supersede the provisions of this Article.

## **ARTICLE VIII**

### **Planning**

**Sec. 8.01. Planning board.**

There shall be a town planning board, which shall be appointed as hereinbefore provided in this charter, and which shall have such powers and perform such duties as provided by law.

**Sec. 8.02. Comprehensive plan.**

There shall be a comprehensive plan as provided by law.

**Sec. 8.03. Zoning ordinance.**

There shall be a zoning ordinance as provided by law.

**Sec. 8.04. Zoning board of appeals.**

There shall be a zoning board of appeals, which shall be appointed as hereinbefore provided in this charter, and which shall have such powers and perform such duties as provided by law.

## ARTICLE IX

There shall be a port authority as provided by special Maine statutes as amended.

## ARTICLE X

### Nominations and Elections.

**Sec. 10.01. Municipal elections.**

The regular election for the choice of members of the town council and the superintending school committee shall be held on the first Tuesday of October each year.

**Sec. 10.02. Nominations.**

Any qualified resident voter of the town may be nominated for the council or superintending school committee in accordance with the statutes of the State of Maine.

**Sec. 10.03. 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 nominations 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. 10.04. Election officials.**

The town council shall annually, or at least 10 days before any election, appoint a warden and a clerk, in addition to the regular ballot clerks, for each voting place.

## ARTICLE IX

### Initiative and Referendum

**Sec. 11.01. General authority.**

1. **Initiative.** The qualified voters of the town shall have power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a town election.

**2. Referendum.** The qualified voters of the town shall have power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a town election.

**Sec. 11.02. Petition for enactment of ordinances.**

Voters of the town may at any time propose the enactment of any lawful ordinance by filing a petition stating the complete text of such ordinance, and signed by not less than 15% of the qualified voters of the town, with the town clerk. The council shall call a public hearing in the manner prescribed in section 2.14 but 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 election for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the election, such ordinance shall be enacted by the council in the manner prescribed for ordinances in general. Such ordinance shall take effect in the same manner as ordinances of the same kind adopted by the council, provided a majority of those voting thereon shall have voted in the affirmative.

Any such proposed ordinance shall be examined by an attorney for the town before it is submitted to the voters. The attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and constitutional provisions and to assure accuracy in its text and references and clarity and precision in its phraseology, but he shall not materially change its meaning and effect

**Sec. 11.03. Petition for overrule of action of council.**

All ordinances shall be subject to overrule by a referendum as follows: If, within 30 days after the enactment of any such ordinance, a petition signed by not less than 15% of the qualified voters of the town is filed with the town clerk requesting its reference to a referendum, the council shall call a public hearing as provided in section 2.14, subsection 2, but 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 election for the purpose of submitting to a referendum vote the question of adopting such ordinance. Pending action by the voters of the town, the referred ordinance shall be suspended from becoming effective until it has received a vote of the majority of the voters voting on said question.

**Sec. 11.04. Form of ballot.**

The form of the ballot for the proposed ordinance (or repeal of ordinance) shall be substantially as follows: Shall the proposed ordinance (or repeal of ordinance) a copy of which is printed herein or attached hereto, be adopted (or repealed)? Yes..... No..... (The voters shall indicate by a cross or check mark placed in box under the words YES or NO their opinion of the same.

**ARTICLE XII**

**General Provisions**

**Sec. 12.01. Personal financial interests.**

Any town officer or employee who has a financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the

town or in the sale of any land, material, supplies or services to the town or to a contractor supplying the town shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a town officer or employee in the making of such sale or in the making or performance of such contract. Any town officer or employee who willfully conceals such a financial interest or willfully violates the requirements of this section shall, if found guilty after hearing as provided in section 2.09, forfeit his office or position. Violation of this section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the town shall render the contract or sale voidable by the town council.

**Sec. 12.02. Prohibitions.**

**1. Activities prohibited.**

**A.** No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any town position or appointive town administrative office because of race, sex, political or religious opinions or affiliations.

**B.** No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

**C.** No person who seeks appointment or promotion with respect to any town position or appointive town administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

**D.** No town official shall directly or indirectly, orally, by letter or otherwise solicit or assist in soliciting from any person in the employ of the town any assessment, subscription or contribution for any political party or political purpose whatever.

**2. Penalties.** Any person who violates any of the provisions of section 12.02 shall forfeit his office or position if found guilty after hearing as provided in section 2.09 and shall be ineligible for a period of 5 years thereafter to hold any town office or position.

**Sec. 12.03. Summons before town 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 town council for the Town of Kittery 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 said summons to be without reasonable excuse, shall impose a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 30 days, or by both.

**Sec. 12.04. 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 Kittery, and will faithfully discharge the duties of the office of .....

**ARTICLE XIII**

**Transitional Provisions**

**Sec. 13.01. Repealing clause.**

The following private and special laws of Maine 1959, chapters 31 and 39, and 1961, chapter 173, and all other acts and parts of acts of the private and special laws of Maine relating to the Town of Kittery, inconsistent with the provisions of this charter, are repealed.

**Sec. 13.02. Separability.**

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby.

**Sec. 13.03. Short title.**

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

**Sec. 13.04. Expiration term of present elected officials.**

The terms of all of the present elected town officials, including the school committee, shall expire when their successors are duly elected and inducted into office or appointed and sworn into office in November, 1967.

**Sec. 13.05. Officers and employees.**

1. **Rights and privileges preserved.** Nothing in this charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are town officers or employees at the time of its adoption.

2. **Continuance of office or employment.** Except as specifically provided by this charter, if, at the time this charter takes full effect, a town administrative officer or employee holds any office or position which is or can be abolished by or under this charter, he shall continue in such office or position until the taking effect of some specific provision under this charter directing that he vacate the office or position.

3. **Continuance of members of present boards.** Members of all boards and commissions holding office at the time this charter takes effect shall continue in office until their term of office has expired and their successors have been duly appointed and qualified.

**4. Personnel system.** Any employee holding a town position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position, but in all other respects shall be subject to the personnel system provided for in section 5.02.

**Sec. 13.06. Departments, offices and agencies.**

**1. Transfer of powers.** If a town department, office or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the town department, office or agency designated in this charter or, if the charter makes no provision, designated by the town council.

**2. Property and records.** All property, records and equipment of any department, office or agency existing when this charter is adopted shall be transferred to the department, office or agency assuming its powers and duties, but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the council in accordance with this charter.

**Sec. 13.07. Pending matters.**

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on or dealt with by the town department, office or agency appropriate under this charter.

**Sec. 13.08. Municipal laws.**

All town ordinances, resolutions, orders and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto.

**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 Kittery at any special town election to be held on or before the first day of October, 1967, 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 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, which shall be substantially as follows:

	For the Charter	Against the Charter
"Shall 'An Act to Grant a New Charter for the Town of Kittery', passed by the 103rd Legislature, be accepted?"	<input type="checkbox"/>	<input type="checkbox"/>

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



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 on the first Tuesday in November, 1967, with the officers to be installed in office on the 3rd Tuesday of November, 1967.

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