

**The Report of
The Charter Review Committee
December 22, 2017**

To: The Bennington Select Board

From: The Charter Review Committee, appointed by the Bennington Select Board: Robert Plunkett, co-chair, Sean-Marie Oller, co-chair, Jonathan Cohen, Robert Ebert, Lynn Green, Michael Keane, and Dan Malmborg

Date: December 22, 2017

Re: The Charter Review Committee's recommendations for updating the Bennington Town Charter

Charge: Review the Town Charter and recommend such changes as it finds necessary or advisable for the purpose of improving the operation of Town government.

Background

The Charter Review Committee began meeting in July, 2017, and met each week thereafter. In addition, the Committee held two informational evening meetings and four longer committee meetings in the evening to allow for public input. At the Committee's first meeting it was agreed that a line by line, section by section evaluation of the current Bennington Town Charter was imperative in order to guarantee a complete and thorough review. The committee was committed to public input and set up a portal on the Town website to gather feedback. Each meeting started with time for public comment as well as time to review any received comments. Each meeting agenda and any material gathered was posted for the public to view and comment on. The committee used the services of James Barlow, an attorney well versed in town Charters and Municipal law to help the committee with their task. Mr. Barlow educated the Committee on the various forms of local government structures in Vermont and was available to answer questions from the committee throughout the process. The Bennington Town Charter was last reviewed in 2005.

Executive Summary

The Committee's charge "review the charter and recommend such changes as it finds necessary or advisable for the purpose of improving the operation of town government." With this charge in mind the committee is recommending changes that it believes will improve the Town's government operation. You will see in the full Charter document where changes are recommended, both additions and deletions are noted. The Committee is also recommending notations that direct the reader to Vermont laws where applicable. The Committee's more significant changes come in the form of strengthened language to the Select Board and Town Manager sections as well as the Taxation section. All of the recommended changes come after thoughtful and deliberate discussions with respect to improving the operation of town government.

Charter Amendment Process

The Town of Bennington was first chartered in 1749. From that time until 1970, the town was governed by various acts of the Legislature of the State of Vermont. In 1967, the Legislature passed Act 83 - "An Act to Provide a Charter for the Town of Bennington." That Charter was accepted by the voters in 1970; the Town of Bennington and the Village of Bennington were consolidated as Bennington, and from then until now the town has been governed by our single, comprehensive charter.

The Charter has been amended from time to time since 1970, with the most recent substantive amendments occurring in 2005. The Committee had at its disposal the bare text of these changes. What the Committee did not have was a detailed explanation of the reasons for each change, as a compendium of the history of the town's modern charter has not previously been compiled. The Committee, however, found that our discussion was greatly informed by the institutional memory and oral history provided by members of the town administration and by members of the community.

The process of amending a town charter involves at least three levels of approval. First, charter amendments must be proposed, either by the Select Board or by petition of the citizens of Bennington. Second, the voters of the town must approve the proposed amendments. And finally, the Legislature must approve the amendments and enact them as state law. In 2017, the Legislature amended this procedure to require a town to submit documentation of its amendment approvals, including minutes taken from public hearings that are required prior to the town vote. The committee endorses this approach, and submits with this report documentation as a record of its deliberations. The Committee would also recommend that as comprehensive a record as possible be compiled including all prior charter amendments to aid later review.

Recommendations

The Committee reviewed the entire Charter over the course of its deliberations. Our recommendations, therefore, consist of changes to the text, and also a deliberate intent to keep the text unchanged in some areas. While the Charter does consist of discrete subchapters (of Chapter 103 of Title 24 Appendix of the Vermont Statutes Annotated) and sections, our recommendation is to adopt the Charter, as revised, as a whole. Having said that, our recommendations can be adopted individually (except as explicitly noted). If the Select Board opts for the latter, we recommend that the amendments be proposed to the voters as separate articles by section of the Charter.

Our recommended changes are both substantive changes, that directly impact a power of the town, and also language and style changes that do not affect the town's powers but modernize or clarify the meaning of the Charter. The specific language recommendations can be found in the proposed revised charter (attached).

Substantive Recommendations

Subchapter 1 - Section 102 - Additional Town Powers

Subchapter 1 of the Charter is titled "Powers of the Town." The Committee interpreted this subchapter to grant certain powers to the town as a whole. Section 102 enumerated certain powers relating to ordinances. The process to adopt, amend, repeal, and enforce lies only with the Select Board. The Committee therefore recommends that the entirety of Section 102 be combined with Section 302 – "Additional Powers of the Select Board" to adopt ordinances. This clarifies that the Select Board has these enumerated powers.

It is important to note that The Committee also made recommended changes to Section 302 (listed below). Therefore, the recommendation to eliminate Section 102 cannot be separated from the approval of amendments to Section 302.

Subchapter 1 - Section 104(b) - Recall

The recall provision contained an unclear deadline and an unclear requirement for passage of a "recall". The Committee recommends that these be clarified to both ease a limitation on a recall vote and to prevent conflicts in interpretation of this subsection. Therefore, the committee recommends striking the requirement of 15 calendar days.

Subchapter 2 - Section 202(a) - Appointive Officers

The committee recommends removing the requirement of a Constable. This position has been vacant for some time and the Bennington Police Department fulfills most of the duties of a constable. Recent state requirements require a Constable to be certified as a law enforcement officer, this requirement would significantly increase the cost associated with the appointment of a Constable.

Subchapter 3 - Section 302(2) - Additional powers of the Select Board to adopt ordinances

The Committee recommends that the powers enumerated in Section 102 relating to waste removal be incorporated into Section 302. The Committee further recommends the inclusion of the statutory definition of "solid waste" to clarify the power of the town.

The elimination of Section 102 is dependent on the approval of this change.

Subchapter 3 - Section 302(5) - Additional powers of the Select Board to adopt ordinances

The Committee recommends that the powers enumerated in Section 102 relating to construction be incorporated into Section 302.

In the current Charter, the ability to establish minimum standards for plumbing, heating and wiring is limited to preventing hazard or danger. The Committee recommends that limitations on this power not be limited to mere hazard or danger.

The elimination of Section 102 is dependent on the approval of this change.

Subchapter 3 - Section 302(6) - (8) - Additional powers of the Select Board to adopt ordinances

The Committee recommends that the powers enumerated in Section 102 relating to construction be incorporated into Section 302.

The elimination of Section 102 is dependent on the approval of this change.

Subchapter 3 - Section 302 (9) - Additional powers of the Select Board to adopt ordinances

The committee recognizes the vast array of technological advancements and societal changes since the last charter review in 2005 that may provide challenges for our local government. We discussed the impact of potentially intrusive advancements including Uber, Airbnb, urban chickens, drones, e-cigarettes, police body cameras, solar panels etc. and whether state statutes addressed any/all of these.

Ultimately, The Committee recommends that the Select Board have the power to regulate intrusive technologies, including drones that may intrude upon the interests of its citizen to provide the right balance between recreational interests, commercial opportunity, law enforcement and the protection of fundamental rights of citizens.

For further background, The Committee recommends reading the attached article in Municipal Lawyer "Into Uncharted Airspace: Her Come the Drones:."

Subchapter 3 section 303 (1) Further powers of the Select Board

The Committee met with members of the Bennington Fire Department on two separate occasions. In addition, two Deputy Chiefs attended two Charter Review committee meetings and spoke to the Committee at the public comments portion of the meeting with regard to a volunteer vs paid fire department. The Committee, in looking to the future, when there may be a need to pay certain members of the fire dept., wanted to write language into the charter that would allow the Select Board to pay volunteers, if necessary, and at the same time keep the autonomy of the Fire Dept.

Subchapter 3 - Section 304(a) - Organization of Select Board

The Committee spent a significant amount of time discussing the structure of town government. The Committee considered formally-submitted public comments, various discussions in-and-around the community, and the current Mayoral petition in circulation.

The Committee examined three types of town government: Strong Mayor, Weak (ceremonial) Mayor, and Town Manager/Select Board. Ultimately the Committee focused on the Town Manager/Select Board form of government with four substantial modifications designed to improve the operations of Town Government; and to address the concerns that some citizens have expressed for more formal leadership and accountability in Town Government. The four recommended modifications are listed in this section and in sections 304 (g), 304 (h) and 401 below.

First, The Committee recommends the designation of its Chair as the head of Town government for ceremonial purposes. A number of Vermont towns assign the chair of the Select Board as the face of the town, using the same language that the Committee recommends. The committee's intent is to set the expectation that the Select Board Chair will provide leadership and vision for the town including being

available to attend various area events as the ceremonial head of the Town. It is acknowledged that the Select Board Chair typically has a full time job and wouldn't be able to attend all events, but the expectation to play this role would be a consideration when selecting the Select Board Chair.

Subchapter 3 - Section 304(g) - Organization of Select Board

Second, the Committee recommends that the Select Board create "Select Board Rules of Procedure and Conduct" and review them annually. An annual review ensures that The Select Board familiarize itself with the rules and allows the rules to be updated as necessary.

Subchapter 3 - Section 304(h) - Organization of Select Board

Third, the Committee recommends setting minimum attendance requirements for the Select Board members. The Committee recommends that a Select Board member who is absent from four consecutive warned Select Board meetings or 50% or more of warned Select Board meetings in any 6-month period be removed from the Select Board.

Subchapter 4 - Section 401 - Appointed by Select Board

Fourth, the Committee recommends the Town Manager be appointed for three-year terms and that the Town Manager be performance reviewed annually by the Select Board. The position is still subject to removal by the Select Board upon a 90-day notice

With the four modifications noted in Section 304 (a) 304 (g), 304 (h) and 401 above, The Committee believes the Town Manager/Select Board form of government is strengthened and adds greater accountability. Additional reasoning centered on the ability of the Select board to screen, hire and fire a qualified individual who will assume the extensive administrative duties of Town Manager. (See town manager job description attached). On the other hand, candidates in a strong mayoral form of government would not be subject to such screenings and qualification requirements. A conversion to a Strong mayoral system would also require a strong pool of candidates which may or may not be available to run for the post. It would also require extensive changes to the Charter to clearly delineate the roles and responsibilities of the Mayor vs. the Council/Select Board as well as significant logistical steps to set up a new form of government.

It was also noted that current mayoral petition grants the mayor the power to veto a majority vote by the Select Board, which many found to be an alarming amount of power granted to one individual.

Subchapter 4 - Section 404(j) - Duties of the Town Manager

The Committee recommends that the Select Board create, and the Town Manager be limited by, policies for purchasing and bidding.

Subchapter 5 - Section 506 - Bennington Downtown Improvement District

Instead of requiring a town wide vote to change to the area of the Downtown Improvement District, the Committee recommends that changes can be approved by the Select Board, but only after a warned public hearing. In the Committee's view, the interests of the community, particularly of those that would

be directly impacted by a change in the area of the District, is better suited to Select Board approval after a warned public hearing rather than town-wide vote.

The Committee also discussed a town wide tax, in the belief that, spreading the current tax amount across a larger base would result in a minimal burden on all taxed entities. Alternatively, applying the current district tax rate town wide would provide a larger pool of tax dollars to provide more meaningful investment in the downtown district. Ultimately, the committee did not recommend applying this tax town wide, although many believe a strong, vibrant downtown benefits everyone.

Subchapter 5 - Section 509 - District Annual budget

Currently the Charter requires that the Town Manager submit the Downtown Improvement District Annual Budget. The Committee recommends that a designee of the Select Board also be authorized to submit the District budget. This change better aligns with the current "Purposes and Powers" of the Select Board to contract with a service provider for the District.

Subchapter 5 - Section 510(a), (d) - District Taxes

The current Charter exempts properties used for residential purposes from paying the Downtown Improvement District Tax. The Committee recommends limiting that exemption to owner occupied portions of properties. The Committee's rationale is that all income generating properties are, in effect, businesses.

Subchapter 5 - Section 511 - Local option tax

The Committee recommends the Charter allow the Select Board to put forth a proposal for any or all of four local option taxes for voter approval. The language of the recommended Charter change is essentially the same as those found in other Vermont town charters and the Vermont statute that grants the option to certain towns. The only alteration from the statutory language the Committee recommends is that an alcohol tax and a meals tax may be considered separately rather than only as a singular "alcohol and meals tax." It is also noted that it is the current practice of the State Department of Taxes to categorize these taxes into three categories: 1) Sales Tax 2) Meals and Rooms Tax 3) Alcohol Tax.

This Charter amendment would give the town the authority to tax after voter approval. The recommended Charter change does not impose the tax.

The group discussed:

- pros and cons of imposing a local options tax, which taxes would be disproportionately paid by local residents vs. visitors
- what surrounding counties (in Vermont, Massachusetts, New York charge) to remain competitive
- the importance of considering the total amount that would be generated from a given tax in order to create a meaningful pool of funds. (i.e. 1% of a small number has little impact).
- whether there should be parameters around how funds could be spent. (Examples include capital projects, raining day fund, downtown improvements, marketing)

Ultimately the Committee decided the Charter should not delineate detailed parameters of a Local Options Tax, but that the Select Board should be granted the flexibility to structure a local options tax proposal to be voted on by the citizens of Bennington.

Subchapter 8 - Section 806 - Charter Review Committee

The Committee recommends that periodic review be returned to the Charter. The Charter had not been reviewed for twelve years prior to the Committee's appointment. Although the Select Board and the citizens can review the Charter and potentially propose amendments at any time, a required periodic review would better serve the town. The Committee recommends requiring a review every 5-years.

Language and Style Recommendations

Any recommended changes not described above, the Committee believed to be non-substantive. While the Committee does not believe the non-substantive recommendations impact the powers of the town, the Committee found the changes necessary or advisable either to clarify a power or to update language for consistency and readability. As an example, the term "Select Board members" had been used throughout the Charter to describe powers that are held by the Select Board itself, and not by the members individually. Also, the Committee recommends the language regarding billboard ordinances be removed from Section 604, as this language is redundant to Vermont statutory authority and the town does not have a billboard ordinance.

All of the recommended changes can be found line-by-line in the proposed revised Bennington Town Charter document voted on by the Charter Review Committee on December 20, 2017.



--BENNINGTON--

TOWN CHARTER

DRAFT WORKING DOCUMENT AS OF DECEMBER 21, 2017

Preamble

The people of Bennington reaffirm faith in Government of the people, by the people, and for the people and describe this government in a charter with provision to review and amend. The charter of the Town of Bennington reflects concern to improve the quality of life for all people **and to improve the operation of Town government.**

SUBCHAPTER 1.

POWERS OF THE TOWN

§ 101. General law applies

(a) All provisions of the Constitution and laws of the State relating to towns and villages shall apply to the Town of Bennington, except as modified by this charter;

(b) The Town of Bennington shall have all the powers and functions conferred upon towns and villages by the Constitution and **general** laws of **this the** State and shall also have all implied powers necessary to implement such powers and functions;

(c) The powers and functions conferred upon the Town of Bennington by this charter shall be in addition to the powers and functions conferred upon the Town by **the laws of the State. now in force or hereafter enacted.** Nothing in this charter shall be construed as a limitation upon such powers and functions.

§ 102. Additional Town powers

In addition to powers otherwise conferred by law, the Town of Bennington is authorized to adopt, amend, repeal, and enforce ordinances:

(a) relating to collection and removal of garbage, ashes, rubbish, refuse, waste, and scrap by the Town and establishment of rates to be paid to the Town for such service;

(b) relating to construction and alteration of public and private buildings and the use thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as to prevent hazardous and dangerous conditions, fires, and explosions by precautionary regulations and inspection;

(c) relating to the use of firearms in settled areas;

(d) relating to the packaging, marketing, and handling of produce and other foodstuffs;

(e) relating to the prevention of pollution of streams, ponds, and other waterways within the Town.

§ 103. Initiative: advisory votes

The voters of the Town have the power to petition for a nonbinding advisory vote to reflect public sentiment. Such petition shall be signed by at least five percent of the voters of the Town and shall state that it is advisory only. The Select Board, upon receipt of such a petition, shall place the article on the warning for the next Town meeting or any other Town election.

§ 104. Recall

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

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

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

SUBCHAPTER 2.

OFFICERS

§ 201. Elective officers

(a) The elective officers of the Town shall be seven Select Board members elected from the Town at large at a duly warned annual town meeting; a Town Clerk; a Treasurer; and a Moderator.

(b) All elective officers shall hold office for a three-year term. The term shall expire the first day of April following the annual Town meeting.

§ 202. Appointive officers

(a) The Select Board **members** shall **annually** appoint **a Constable and other** officers required by law or this charter, including a Board of not **fewer** **less** than three nor more than five listers to serve for such terms as the Select Board **members** decides, **but not less than one nor more than five years, such appointments to be made as vacancies occur in the elected Board of Listers.**

(b) The Select Board **members** may create such appointive officers not provided for by this charter or required by law as **they it** deems to be in the best interest of the Town.

§ 203. Compensation

(a) Compensation paid to the Select Board members shall be set by the voters at Town meeting.

(b) Subject **to** subsection (a) of this section the Select Board **members** shall fix the compensation **of to** all elective officers and of all officers appointed by the Select Board.

(c) The Town Manager, under policies approved by the Select Board **members**, shall fix the compensation of all other officers and employees whose compensation is not fixed by the Select Board pursuant to subsection (b) of this section.

SUBCHAPTER 3.

SELECT BOARD

§ 301. Select Board **members, the legislative body**

The Select Board shall constitute the legislative body of the Town of Bennington and shall have all powers and authority necessary for the performance of the legislative function.

§ 302. Additional powers of **the Select Board **members** to adopt ordinances**

In addition to powers otherwise conferred by law, the Select Board ~~members are~~ is authorized to adopt, amend, repeal, and enforce ordinances:

(1) regulating the parking and operation of motor vehicles; including, despite any contrary provisions of law, the establishment of speed zones wherein the limit is less than 20 miles per hour, all as may be required by the safety and welfare of the inhabitants of the Town;

(2) relating to regulation, licensing, and prohibition of the storage and accumulation of junk cars, garbage, ashes, rubbish, refuse, waste, ~~and~~ scrap, and **solid waste as defined at 10 V.S.A. §6602 (2)** and collection, removal, and disposal of such materials; **including the collection and removal of such materials by the Town and establishment of rates to be paid to the Town for such service;**

(3) relating to registration and regulation of bicycles;

(4) relating to the keeping of dogs, cats, and other domestic animals. ~~in settled areas.~~

(5) relating to construction and alteration of public and private buildings and the use thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as to prevent hazardous and dangerous conditions, fires, and explosions by precautionary regulations and inspection;

(6) relating to the use of firearms in settled areas;

(7) relating to the packaging, marketing, and handling of produce and other foodstuffs;

(8) relating to the prevention of pollution of streams, ponds, and other waterways within the Town.

(9) relating to intrusive technologies, including drones, in order to provide a balance between recreational interests, commercial opportunity, law enforcement, and the protection of fundamental rights of citizens.

(10) the Town may make, establish, alter, amend, or repeal any other bylaws, rules, and ordinances which it may deem necessary for the well-being of said Town, and not in conflict with the Constitution or laws of the State or the United States.

§ 303. Further powers of the Select Board members

In addition to powers otherwise conferred by law, the Select Board members shall also have the power to:

(1) organize and from time to time reorganize, the Fire Department under the supervision of a coordinating committee formed by the Select Board from its members. The Department shall be a volunteer department, **unless an affirmative vote of the majority of the members of the Fire Department authorizes a transition to a paid or combination paid and volunteer department as set forth in a transition plan proposed by the Select Board working with a committee formed from members of the Fire Department.** The Select Board shall have authority to continue any existing contract with a volunteer fire department or to enter on behalf of the Town into contracts with other volunteer fire departments to provide additional fire protection to the inhabitants;

(2) create, **departments not now existing consolidate, or dissolve departments as necessary or relevant** for the performance of municipal services;

(3) create, **consolidate, or dissolve commissions and committees as necessary or relevant commissions and committees not now existing** and appoint the members thereof;

(4) **provide for and** shall provide on an annual basis an independent audit of all Town financial records by a certified public accountant;

(5) inquire into the conduct of any officer, commission, or department and investigate any and all municipal affairs;

(6) discharge all duties heretofore devolving on the Town Agent by general law and hire attorneys on behalf of the Town;

(7) establish an adequate number of polling places within the Town as required for the convenience of the Town voters and without regard to election district boundaries, to the end that election expenses may be lessened and confusion among the voters as to the proper place for them to vote may be avoided; however, one such polling place shall be in North Bennington and the central polling place shall be within the boundaries of the former Village of Bennington.

§ 304. Organization of Select Board

(a) The chair shall be the head of Town government for all ceremonial purposes.

(b) ~~Forthwith~~ a After the annual meeting of the town, the Select Board members shall organize and elect a Chair and Vice Chair.

(c) The Chair of the Board or in his/her absence, the Vice Chair, shall preside at all meetings of the Board and **such presiding officer** shall be a voting member of the Board.

(d) When a vacancy occurs on the Select Board, except as provided in section 104, the remaining members may fill the vacancy by appointment of a registered voter of the Town, such appointment to be for the period until the next annual meeting, when the voters of the District shall fill the vacancy.

(e) The Board shall fix the time and place of its regular meetings to be held at least twice a month.

(f) The presence of four members shall constitute a quorum.

(g) The Select Board shall adopt Rules of Procedure for the conduct of its meetings. The Board shall review the Rules of Procedure annually.

(h) If a Select Board member is absent from four consecutive warned Select Board meetings or is absent from more than 50 percent of warned Select Board meetings in any 6-month period, the member's office shall be vacant and the Select Board shall fill the vacancy in accordance with Section 304(c).

SUBCHAPTER 4.

TOWN MANAGER

§ 401. Appointed by ~~selectors~~ Select Board

The ~~Select~~ Board ~~members~~ shall appoint a Town Manager for a 3 year term which may be renewed for successive 3 year terms ~~for an indefinite term~~, and upon such conditions as ~~they~~ it may determine. Notwithstanding the above, the Town Manager position shall continue to be subject to Section 406 "Removal". The Select Board shall review the Town Manager's performance annually.

§ 402. Town Manager nonpartisan

(a) The Town Manager shall be chosen solely on the basis of his/her executive, administrative, and professional qualifications.

(b) The Town Manager shall not take part in the organization or direction of a political party, serve as a member of a party committee, nor be a candidate for election to any public office.

§ 403. Oath and bond

Before entering upon his or her duties, the Town Manager shall be sworn to the faithful performance of his or her duties by the Town Clerk and the Town Manager shall be bonded ~~give a bond to the Town~~ in such amount and with such sureties as the Select Board ~~members~~ may require.

§ 404. Duties of the Town ~~for~~ Manager

~~(a)~~ The Town Manager shall be the Chief Executive Officer of the Town and

a) shall carry out the policies established by the Select Board, to whom the Town Manager shall be accountable ~~responsible~~.

(b) ~~The Manager~~ shall attend all meetings of the Select Board, except when his or her compensation or removal is being considered, shall keep the Select Board ~~members~~ informed of the financial condition and future needs of the Town, and shall make such other reports as may be required by law, requested by the Select Board ~~members~~, or deemed by him or her to be advisable.

(c) ~~He or she~~ shall perform all other duties prescribed by this Charter, required by law, or ~~by~~ resolution of the Select Board. ~~members~~.

(d) **The Manager** shall be an ex-officio member of all standing committees except the **Development Review Zoning Board**, **but** and shall **may** not vote.

(e) **The Manager** shall prepare an annual budget, submit it to the Select Board **members**, and be responsible for its administration after adoption.

(f) **The Manager** shall compile for general distribution at the end of each fiscal year a complete report on the finances and administrative activities of the Town for the year.

(g) **The Manager** shall provide to the Select Board a monthly financial statement, with a copy to the Town Treasurer.

(h) **The Manager** shall perform all duties now conferred by law on the Road Commissioner within all areas of the Town, except within such villages as may vote not to surrender their charters under this **Charter**, notwithstanding the provisions of 24 V.S.A. § 1236(5).

(i) **The Manager** shall perform all duties now conferred by law on the Collector of Delinquent Taxes.

(j) **The Manager**, **shall**, under policies approved by the Select Board **members**, **shall** be the General Purchasing Agent of the Town and purchase all equipment and supplies and contract for services for every department **pursuant to the purchasing and bid policies approved by the Select Board.**

(k) **The Manager** shall be responsible for the system of accounts.

(l) **The Manager** shall be responsible for the operation of all departments, including **by specification** the Police and Fire Departments.

(m) **The Manager**, **shall**, under policies approved by the Select Board **members**, **shall** have exclusive authority to appoint, fix the salaries of, suspend and remove, all officers and employees except those who are elected or who are appointed by **the** Select Board **members**. When the **Town Manager position** **managership** is vacant, this authority shall be exercised by the Select Board.

(n) **The Manager** may, when advisable or proper, delegate to subordinate officers and employees of the Town, any duties conferred upon him or her.

§ 405. Compensation

The **Town** Manager shall receive such compensation as may be fixed by the Select Board **members**.

§ 406. Removal

(a) On 90 days written notice from **the Select Board**, the **Town** Manager may be removed without cause by a majority of the Select Board **members so voting** at a meeting called for the purpose of voting on removal. During the 90day period, the **Town** Manager may be suspended with pay; **or**

(b) The Select Board **members** may adopt at any time a resolution stating their intention to remove the **Town** Manager and the reasons therefore, a copy of which shall be sent to the **Town** Manager. The **Town** Manager may, within 10 days after such notice is sent, request a hearing; **which This** hearing shall be held by the Select Board **members** not less than 10 days nor more than 20 days from the date of such request, after which the Select Board **members** may dismiss the **Town** Manager. If no request for a hearing is filed **in accordance with the foregoing**, the Select Board **members** may dismiss the **Town** Manager immediately. During the period after the resolution of intention is adopted and until the **Town** Manager's dismissal, he or she may be suspended with pay.

SUBCHAPTER 5.

TAXATION

§ 501. Taxes

Taxes shall be assessed by the Town based on the fair market value of real **and personal** property, in accordance with State law.

§ 502. ~~Discounts elimination~~—Water and sewer fees

~~At such time as the discounts given on the tax rate to those who do not have water or sewer provided by or available from the Town may be eliminated, a~~ **All** costs of operation **of the water**

and sewer systems, and including previously incurred debt, shall be paid from funds established for those purposes and funded by user fees, as may be established from time to time, by the Select Board and charged to owners of real estate that is serviced by municipal water and sewer. applied against users of water and sewer services only.

§ 503. Fair market value of real estate

(a) In the event that the fair market value of real estate is materially changed because of total or partial destruction of, or damage to the property; or because of alterations, additions or other capital improvements, the taxpayer may appeal as provided by law.

(b) When the fair market value of real estate is finally determined by appeal to the Board of Listers or to the Board of Civil Authority, then the value so fixed shall be the fair market value of such real estate for the year in which the appeal is taken.

(c) When the fair market value of real estate is finally determined by the Director of Property Valuation and Review (PVR) a State board or appraisers or by a court having jurisdiction, then the value so fixed shall be the fair market value of such real estate for the year for which such appeal is taken and for the ensuing two years, unless the taxpayer's property is altered materially; is damaged; or if the Town in which it is located has undergone a complete revaluation of all taxable real estate, in the event of which, such fair market value may be changed.

§ 504. Special assessments

Despite any contrary provision in general law, the Select Board members may in its their sole discretion make a special assessment upon real estate for the installation or construction of a public improvement, such special assessment to be such proportion of the total cost of such improvement as the benefit to a parcel of real estate bears to the total benefit resulting to the public in general.

§ 505. Tax within Bennington Rural Fire District No. 1

(a) The tax assessed by the Town on the grand list shall be reduced with respect to real estate

in the Bennington **Rural** Fire District No. 1. This reduction shall be in direct proportion to the amount of the tax assessed by the Town which is used by the Town to provide fire protection services to property not included in the Bennington **Rural** Fire District No. 1.

(b) The purpose of this **section amendment** is to make substantially uniform the taxes assessed throughout the Town for fire protection furnished by all fire departments in the Town. This tax reduction shall remain in effect until such time as the Bennington **Rural** Fire District No. 1 dissolves itself or merges with the Town of Bennington, in accordance with the Charter of the Town of Bennington.

§ 506. ~~Creation of~~ Bennington Downtown Improvement District

There ~~shall be~~ **is hereby created** in the Town of Bennington, a ~~special~~ district, ~~to be known as~~ the Bennington Downtown Improvement District (District), ~~which is~~ **shall be that area** set forth on a map approved by the voters of Bennington and filed with the Town Clerk. The area of the District may be changed upon a majority vote of the **Select Board** ~~legal voters at~~ after a minimum of one ~~an annual or special meeting~~ **public hearing** duly warned. **Following the public hearing, the Select Board may approve the change to the area of the District at a duly called regular or special Select Board meeting. The change shall become effective upon approval.**

§ 507. Repealed, 2005, No. M-6, § 6, eff. June 4, 2005.

§ 508. Purposes and powers

(a) The District is created for the general purpose of maintaining and improving the economic, social, cultural, and environmental vitality and quality of the Town of Bennington (in particular, the District created by this section 506~~7~~ of this charter); to promote the Town and the District as a regional retail, commercial, and service center; and to serve as an advocate for the orderly development of the District in order to encourage expansion of the retail, commercial, and service base of the District and the Town by attracting new business and investment.

(b) The rights, powers, and duties of the District, shall be exercised by the Select Board and shall be broadly construed to accomplish the purposes set forth above and shall include the following:

- (1) To advertise and promote the Improvement District.
- (2) To represent the interests of the District.
- (3) To receive and expend contributions, grants, and income.
- (4) To expend funds as provided for in the budget or as otherwise approved.
- (5) To manage and maintain public spaces and to assume or supplement the services and maintenance heretofore provided to the District by the Town as recommended to and approved by the Select Board.
- (6) To acquire and dispose of property on behalf of the Town.
- (7) To install and make public improvements.
- (8) To improve, manage, and regulate public parking facilities and vehicular traffic within the District.
- (9) To enter into contracts as may be necessary or convenient to carry out the purpose of this charter.
- (10) To regulate, lease, license, establish rules and fees, and otherwise manage the use of public spaces within the District.
- (11) To plan for the orderly development of the District in cooperation with the Town Planning Commission.
- (12) To do all other things necessary or convenient to carry out the purposes for which this District was created.

§ 509. District Annual budget

The Town Manager or other person designated by the Select Board shall submit each year an operating budget of anticipated expenditures and revenues to the Select Board for approval for the next fiscal year. In the event the Select Board does not approve the budget as submitted, the Select Board shall return the budget forthwith to the Town Manager with its recommendations for the Town Manager's reconsideration. Appropriations other than from contributions, grants,

and income shall be raised solely through District taxes which shall be assessed and collected as a tax on property as provided for in section 510 of this charter. The Select Board may borrow money in anticipation of District taxes.

§ 510. District taxes

(a) District taxes are charges levied upon the owners of taxable properties located in the District, **excepting properties used exclusively for residential purposes except for owner occupied residential properties.** The District taxes shall be used to defray the expenses incurred **in connection for with** the operation, maintenance, and repair of the District.

(b) The District tax for each property in the District subject to the tax shall be based upon a rate on each \$100.00 of listed value of the property as adjusted under subsection (c) of this section. The tax rate shall be determined by dividing the amount to be raised by taxes, by the total value of the taxable properties on the grand list as adjusted located in the District which are subject to the District tax under this subchapter.

(c) The District tax shall be set by the Select Board upon approval of the budget by the Select Board and notice in writing thereof shall be given to owners of record as of April 1 of each year of property so assessed, or to their agents or attorneys, stating therein the amount of such District taxes, and such taxes shall be due and payable to the Town Treasurer when normal Town and school taxes are due. The Town Treasurer shall collect unpaid District taxes as provided for the collection of taxes in the charter. District taxes shall be a lien on the properties when assessed and until the tax is paid or the lien is otherwise discharged by operation of law.

(d) In the case of any property used for both residential and nonresidential purposes within the District as of April 1, the Board of Listers (Board) shall adjust the listed value for the purposes of determining the District tax under this section to exclude the value of that portion of the property used for **owner occupied** residential purposes. The Board shall determine the adjusted grand list value of the business portion of the property and give notice of the same as provided under 32 V.S.A. chapter 131. Any property owner may file a grievance with the Board and appeal the decision of the Board as provided for under 32 V.S.A. chapter 131; however, the filing of an appeal of the determination of the Board and pendency of the appeal shall not vacate the lien on

the property assessed, and the District taxes must be paid and continue to be paid as they become due.

§ 511 Local option tax

(a) If the Select Board by a majority vote recommends, the voters of the town may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:

- (1) a one-percent meals tax;
- (2) a one-percent rooms tax;
- (3) a one-percent alcoholic beverages tax;
- (4) a one-percent sales tax.

(b) Any local option tax assessed under subsection (a) of this section shall be collected and administered and may be rescinded as provided by the general laws of this State.

SUBCHAPTER 6.

ZONING

§ 601. Ordinances continue in effect

If at the time this charter becomes effective as the charter of the Town of Bennington there is in force in any village or other area of the Town a zoning ordinance, including billboard zoning, such ordinance shall continue in force within the area for which it was originally enacted. Each such ordinance shall be a valid and legal ordinance within such area and the same shall be and become a valid and legal zoned area with such districts as are provided for in said ordinance.

§ 602. Ordinances of villages not merging.

The zoning ordinance in force within any village in the Town shall continue within the control of such village and the officials appointed to administer the same within such village shall

continue in office pursuant to law until such time as said village ceases to exist and becomes a part of Town.

§ 603. Administration of ordinance of villages which merge

When such villages cease to exist as aforesaid, the ~~Town legislative body~~, **Select Board**, **Board of Adjustment or Development Review Board**, and Administrative Officer shall have jurisdiction of and administer zoning in said village area as a separate zoned area in accordance with the provisions of the ordinance in force therein and the general law. If no Town Administrative Officer ~~and Board of Adjustment or Development Review Board~~ have then been appointed by the ~~legislative body~~, **Select Board**, ~~that body the Select Board~~ shall forthwith make such appointment.

§ 604. Comprehensive Town ordinance

~~The billboard zoning ordinance enacted for the area outside the villages in the Town shall continue to be administered by the Town officials having charge of zoning.~~ When such officials acquire jurisdiction of the zoning ordinance in other zoned areas as herein provided, said ordinances, ~~together with said billboard zoning ordinance~~, shall be deemed to be part of a general town zoning ordinance duly and legally enacted in accordance with a comprehensive plan. Such general ordinance shall be subject to repeal, amendment, or alteration by the Town. ~~under the application provisions of law.~~

SUBCHAPTER 7.

WATER SYSTEM

§ 701. Town powers

The Town may make, alter, and repeal ordinances relating to management, operation, maintenance, replacement, and extension of a Town water system and may fix, and from time to time alter water rates, insofar as such ordinances and water rates are not in conflict with the deeds of gift to the Village of Bennington and Village of North Bennington.

SUBCHAPTER 8.

MISCELLANEOUS

§ 801. Severability

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

§ 802. Merger of municipalities within Town

(a) Any municipality with the Town of Bennington which votes to surrender its existing charter and dissolve under this charter, shall cease to exist as a corporate body and political entity on the January 1st next succeeding, unless such vote becomes final or after October 1st in any year, in which event the municipality shall cease to exist as a corporate body and political entity on the March 1st next succeeding.

(b) All assets of any municipality which surrender its existing charter or dissolves under this charter shall become the property of the Town of Bennington on the day such municipality ceases to exist under subsection (a) of this section.

(c) All liabilities of any municipality which surrenders its existing charter or dissolves under this charter that are outstanding obligations of such municipality on the day it ceases to exist under subsection (a) of this section, including the bonded indebtedness of such municipality shall become liabilities of the Town of Bennington on the day such municipality ceases to exist under subsection (a) of this section.

§ 803. Method of adoption; time; voting

(a) A majority of the qualified voters of the Village of Old Bennington voting by ballot at a meeting duly warned for the purpose, may at any time vote to surrender the charter of said Village and merge with the Town of Bennington under the terms of this charter by voting in the affirmative on an article substantially as follows:

“To determine by ballot whether the Village of Old Bennington will surrender its existing charter and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled an Act to Provide a Charter for the Town of Bennington.”.

(b) A majority of the qualified voters of the Village of North Bennington voting by ballot at a meeting duly warned for the purpose may at any time vote to surrender the charter of said

Village and merge with the Town of Bennington under the terms of this act by voting in the affirmative on an article substantially as follows:

“To determine by ballot whether the Village of North Bennington will surrender its existing charter and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for the Town of Bennington.”.

(c) A majority of the qualified voters of the Bennington Fire District No. 1, voting by ballot at a meeting duly warned for the purpose may at any time vote to dissolve said Fire District and merge with the Town of Bennington under the terms of this charter by voting in the affirmative on an article substantially as follows:

“To determine by ballot whether the Bennington Fire District No. 1 will dissolve and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for the Town of Bennington.”.

(d) A meeting to consider an affirmative vote under any of the foregoing sections shall be held only upon petition of not less than five percent of the qualified voters of the municipality filed with the legislative body thereof within 20 days after such affirmative vote requesting a meeting to vote on an article substantially as follows:

“To determine by ballot whether the (insert municipality) will confirm its vote of (insert date) in favor of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for the Town of Bennington.”

(e) If any municipality votes under subsection (d) of this section to reconsider an affirmative vote, such municipality may at any time thereafter hold a meeting in accordance with subsections (a), (b), and (c) of this section to vote again on this charter.

(f) An affirmative vote by any municipality shall become final and conclusive when a petition to reconsider is not filed in accordance with subsection (d) of this section or when a meeting to reconsider is held under subsection (d) of this section and the vote at such a meeting confirms the affirmative vote.

(g) Early Voter Absentee Balloting. Voting by early absentee ballot shall be permitted at any meeting held under this section.

§ 804. Notice to Secretary of State

The Clerk of the Town of Bennington shall notify the Secretary of State of the vote of any meeting held under section 803 of this charter within 10 days after the meeting.

§ 805. Existing water systems; succession by Town

If the Village of North Bennington ceases to exist in accordance with this subchapter; the Town shall succeed to all the rights, title, interest, privileges, duties, and obligations of said Village under a deed of gift from Laura H. Jennings, dated March 3, 1924.

§ 806. Charter Review Committee

At least once every five years the Select Board ~~may~~**shall** appoint a Charter Review Committee of **not fewer than** ~~less than~~ five nor more than nine members of the ~~inhabitants~~ **residents** of the Town. ~~said~~ **The** Committee ~~to~~ **shall** review the charter and recommend such changes ~~therein~~ as it finds necessary or advisable for the purpose of improving the operation of Town government. ~~Said~~ **The** Committee shall prepare a written report of its ~~their~~ recommendations ~~amendments to the charter~~ in time for ~~same~~ **those recommendations** to be submitted to the Select Board for review no later than one year after the appointment of ~~said~~ **the** Committee. At the discretion of the Select Board such **recommendations** ~~amendments~~ may be warned for ballot vote at an annual or special Town meeting to be held no later than one year after the submission of the report. The Select Board shall provide in ~~its~~ ~~their~~ budget for any year when a Charter Review Committee is appointed, ~~a sum of money~~ **funding** for ~~said~~ **the** Committee.