

To: Seth Gardner, Chair, East Montpelier Selectboard
From: Edie Miller, Chair, East Montpelier Charter Committee
Date: November 22, 2013
Re: Charter Committee Recommendations

Attached you will find the committee's recommended proposal for East Montpelier's first charter. You will note that we have chosen a very simple format which makes clear the purpose of developing a charter and outlines the minimal changes that are recommended. Those modifications are three:

- Changing the position of treasurer from an elective office to one appointed by the selectboard on the recommendation of a selection committee;
- Changing the term of office of the zoning administrator from three years to one year; and
- Abolishing the offices of trustees of public funds, town agent and town grand juror and assigning those functions to the selectboard.

In arriving at these details we considered other items for possible inclusion and were guided by the following goals/criteria in making our final decisions:

- to help the selectboard more effectively exercise its ultimate responsibility for town affairs;
- to solve problems that the town currently has, has had in the past, or might have in the future;
- to be consistent with democratic control, particularly observing the principle of checks and balances;
- to avoid or minimize unintended consequences from modifications;
- to include changes that can be accomplished only through a charter;
- to keep the charter simple.

In considering whether offices should be elected or appointed we asked ourselves

- Is this a policy vs. a procedural position?
- Does one need a certain skill set to carry out the positions?
- Would it enhance the performance of the officer to have annual performance review?

We hope that this proposal is satisfactory to you. Let us know if you would like further detail about our work and/or the final recommendation.

One of the items you asked us to consider – a conflict of interest directive “with teeth” – we found to have great merit. However, since the same result can be accomplished by creating an ordinance adopted by a town vote, that simpler method of adoption seems preferable to us. To that end, we have spent some time examining language in the current selectboard policy on this subject combined with that of a sample conflict of interest ordinance supplied to us by Paul Gillies. We forward this draft to you while noting the following:

- You will see that this draft provides a way for boards to enforce recusal for a member who may not recognize a conflict that is seen by others (section 7).

- It also deals with the issue of allowing necessary action when conflict has been recognized but there is no one else to vote on the action (section 8).
- There is nothing in this draft that would deal with a situation where a singular officer (not part of a board) such as the town clerk or collector of delinquent taxes might act in a situation in which others perceive a conflict. Paul Gillies has advised us that enforcing control on independently elected officials is something that is difficult to address outside of the ballot booth.

We urge you to consider replacing East Montpelier's current conflict of interest policy by placing this or a similar conflict of interest ordinance on our Town Meeting ballot in 2014.

The following time line for moving forward with the charter was developed by our attorney Paul Gillies. The authority for all of this is 17 V.S.A. §2645

1. Warnings for Town Meeting must be posted 30-40 days before the meeting. Next year town meeting will be on March 4. 40 days before that day is January 29. Between January 29 and March 4, you have to hold the second of two public hearings. Warn the article on the charter as, "Shall the voters approve the proposed East Montpelier Town Charter, as approved by the selectboard?" Warn it as a part of the annual meeting notice and warning.
2. The two public hearings can be warned together in December. You warn a hearing the same as you would a town meeting: 30-40 days' posted notice (and published notice at least five days before the hearing). You can hold the first public hearing in January and the second in conjunction with the pre-Town Meeting Forum. If, for instance, the first hearing were held on January 13 (a Monday), the warning for the two public hearings would then best be posted on or before December 12 at the latest and probably even better a week or two before then. A week or two before January 13, you'd do the newspaper notice.
3. Immediately after the vote, get the materials required by §2645 together and send them to the State Archives for processing. Share them with our local representative, Tony Klein, as well. Representative Klein will want to reserve a bill number for the charter and fill in the blanks after the first Tuesday of March.

Lastly, we have created an explanatory introduction to the proposed charter which explains how it came to be. If you agree, we'd like to see this appended to the charter proposal as a page 1 introduction so that it will appear with all paper and digital copies that residents will examine.

On behalf of the committee, I thank you for the opportunity to participate in this most interesting process. We have all learned a great deal. Please instruct us on how we can help the process move forward.

November, 2013

To the citizens of East Montpelier, Vermont:

At Town Meeting 2013 the selectboard discussed the creation of a committee to investigate whether East Montpelier could benefit from having a charter and asked for volunteers. After further outreach through FrontPorchForum and other postings, the selectboard, on April 15, 2013 appointed eleven volunteers to serve on the East Montpelier Charter Committee. The committee was charged with researching specific areas of town government that might benefit from changes that could be accomplished through a charter. Additionally, the committee was free to follow other avenues of research and to consider new ideas.

On May 8, 2013 the Charter Committee brainstormed criteria to apply to each item to be considered for the charter, and the list changed very little over the next months. The committee realized that this list of criteria not only held each idea to the same standard, but also described the goals of the charter. The members feel strongly that the citizens of East Montpelier understand these guiding principles and goals:

- to help the selectboard more effectively exercise its ultimate responsibility for town affairs;
- to solve problems that the town currently has, has had in the past, or might have in the future;
- to be consistent with democratic control, particularly observing the principle of checks and balances;
- to avoid or minimize unintended consequences from the modification;
- to include changes that can be accomplished only through a charter; and
- to keep the charter simple.

We, the undersigned members of the charter committee, believe that our charter complies with the above conditions and hereby submit our recommendations to the selectboard and citizens of East Montpelier, Vermont. If approved by vote of the town, then the charter must be ratified by the state legislature.

Respectfully,

Richard Brock
Carl Etnier
Rick Mastelli
Julie Potter

Ed Deegan
Karen Gramer
Edie Miller
Kim Watson

Michael Duane
Norman Hill
Jack Pauly

**PROPOSED MUNICIPAL CHARTER
TOWN OF EAST MONTPELIER**

§ 1. Statement of purpose

Under the authority granted by the General Assembly of the State of Vermont, this charter modifies the organization and functioning of local town government in the town of East Montpelier, Vermont. Except when changed by the provisions of this charter, all provisions of the statutes of the state of Vermont relating to municipalities shall apply to the town of East Montpelier. In this charter, no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the town would have if the particular powers were not mentioned, unless this charter otherwise provides. The modifications are intended to accomplish the following goals:

- (a) to help the selectboard more effectively exercise its ultimate responsibility for town affairs;
- (b) to solve problems that the town currently has, has had in the past, or might have in the future;
- (c) to be consistent with democratic control, particularly observing the principle of checks and balances;
- (d) to avoid or minimize unintended consequences from the modification;
- (e) to include changes that can be accomplished only through a charter; and
- (f) to keep the charter simple.

§ 2. Elected offices

- (a) The offices of town grand juror, town agent, and trustees of public funds, are abolished, and the functions assigned to the selectboard.
- (b) In performing the duties of the trustees of public funds, the selectboard will consult with and have the assistance of the town treasurer.

§ 3. Town treasurer

- (a) The selectboard shall appoint a town treasurer in the manner set forth in subsection (b) of this section. The appointee shall be competent in the keeping of records, investments, and accounting, and shall serve at the pleasure of the selectboard. The person chosen need not be a resident or qualified voter of East Montpelier.
- (b) Prior to appointing a town treasurer and no more than 45 days after the treasurer position is vacated, the selectboard shall appoint a committee to review and recommend to the selectboard qualified candidates for the position of treasurer. The committee shall be composed of two residents, a certified public accountant and the following town officers: two members of the

selectboard, an auditor, and the town clerk. All except the certified public accountant must be residents of the town of East Montpelier. The committee shall have the authority to solicit candidates, advertise notice of a vacancy in the treasurer's position and to make an investigation of a candidate's credentials and background as the committee deems appropriate. Upon completion of the investigation and interviewing of candidates, the committee shall submit to the selectboard the names of those candidates deemed qualified for the position.

(c) The selectboard shall appoint a treasurer or, if applicable, notify the committee that none of the candidates shall be appointed, no later than 30 days following the submission of the names of candidates deemed qualified by the committee.

(d) Members of the committee described in subsection (b) of this section shall serve until a treasurer is appointed by the selectboard. Meetings of the committee shall be warned and conducted as public meetings in accordance with the requirements of Vermont statutes and this charter and the committee shall be entitled to meet in executive session as authorized by 1 V.S.A. §313.

(e) Until such time as a treasurer is appointed pursuant to this section, the selectboard shall appoint an interim treasurer.

§ 4. Zoning administrator

A zoning administrator shall be nominated by the planning commission and appointed by the selectboard for a term of one year. The zoning administrator may be removed for cause at any time by the selectboard after consultation with the planning commission.

§ 5. Separability

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstances is held invalid, the application of this charter and its provisions to other persons or circumstances shall not be affected thereby.

Enactment history:

First hearing held on _____

Second hearing held on _____

Vote taken on March 4, 2014

East Montpelier Conflict of Interest Ordinance

Draft November 22, 2013

Presented to E.M. Selectboard from E.M. Charter Committee

Article 1. Authority. Under the authority granted in 24 V.S.A. §1984, the Town of East Montpelier hereby adopts the following ordinance concerning conflicts of interest.

Article 2. Purpose. The purpose of this ordinance is to ensure that the business of this municipality will be conducted in such a way that no public official of the municipality will gain a personal or financial advantage from his or her work for the municipality and so that the public trust in municipal officials will be preserved. It is also the intent of this ordinance to insure that all decisions made by municipal officials are based on the best interest of the community at large.

Article 3. Definitions. For the purposes of this ordinance, the following definitions shall apply:

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

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

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

C. **Necessary action** means administrative functions that cannot reasonably be delayed until a proper quorum is achieved.

C. **Official act or action** means any legislative, administrative or judicial act performed by any elected or appointed officer or employee while acting on behalf of the municipality.

D. **Public body** means any board, council, commission or committee of the municipality.

E. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.

F. **Public officer** or **public official** means a person elected or appointed to perform executive, administrative, legislative or quasi-judicial functions for the municipality.

G. **Quasi-judicial proceeding** means a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority.

Article 4. Disqualification.

- A. A public officer shall not participate in any official action if he or she has a conflict of interest in the matter under consideration.
- B. A public officer shall not personally, or through any member of his or her household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in a cause, proceeding, application or other matter pending before the public body in which the officer holds office or is employed.
- C. In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him- or herself from the matter.
- D. Public officers shall not accept gifts or other offerings for personal gain by virtue of their public office that are not available to the public in general.
- E. Public officers shall not use resources not available to the general public, including but not limited to town staff time, equipment, supplies, or facilities for private gain or personal purposes.

Article 5. Disclosure. A public officer who has reason to believe that he or she has or may have a conflict of interest but believes that he or she is able to act fairly, objectively and in the public interest in spite of the conflict of interest shall, prior to participating in any official action on the matter disclose to the public body at a public hearing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Nevertheless, the person or public body which appointed that public officer retains the authority to order that officer to recuse him- or herself from the matter, subject to applicable law.

Article 6. Recusal.

- A. A public officer shall recuse him- or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
 - 1. Any person may request that a member recuse him- or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him- or herself;
 - 2. A public officer who has recused him- or herself from a proceeding shall not sit with the board, deliberate with the board, or participate in that proceeding as a board member in any capacity;
 - 3. If a previously unknown conflict is discovered, the board may take evidence pertaining to the conflict and, if appropriate, adjourn to a short deliberative session to address the conflict; and
 - 4. The board may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the board. The board may then resume the proceeding with sufficient members present.

In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him- or herself from the matter, subject to applicable law.

Article 7. Enforcement

If a question of a member's disqualification is brought to the attention of any board, commission or committee by any party or person or by another board, commission or committee member, and the member does not disqualify him- or herself, the board, commission or committee shall consider the factual basis for the question and shall decide the matter by majority vote, the challenged member abstaining, before any other business is conducted. A formal vote shall be taken on every question of a conflict. A full report of the issue and discussion shall be made in the minutes of the meeting. Upon majority vote, the board may further request that the offending public officer resign from the board.

Article 8. Exception. The recusal provisions of Article 6 shall not apply if the legislative body of the municipality determines that an emergency exists or necessary action has to be taken and that actions of the public body otherwise could not take place. In such cases, a public officer who has reason to believe he or she has a conflict of interest shall disclose such conflict as provided in Article 5.

Article 9. Appointment of alternate officers

The selectboard may appoint an alternate town officer to serve in place of a disqualified town officer during the period of disqualification or unavailability.

Article 10. Effective Date. This ordinance shall become effective immediately upon its adoption by the voters of East Montpelier.