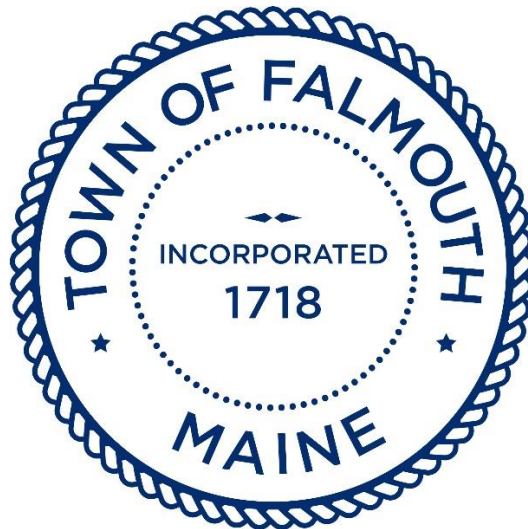


**TOWN OF FALMOUTH**  
**CHARTER REVIEW COMMISSION**

**FINAL REPORT**



**September 18, 2018**

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September 18, 2018

Caleb Hemphill  
Chair, Falmouth Town Council  
270 Falmouth Road  
Falmouth ME 04105

Dear Chair Hemphill,

It is a pleasure to forward to you the final report of the 2018 Town Charter Review Commission.

### **Background**

In June 2018, the Town voters elected David Goldberg, William Lunt III, David McConnell, Richard Olson, Rachel Reed, and me as the elected representatives to the 2018 Charter Commission. The Town Council appointed Edward Kitchel (Ned), Sean Mahoney and Mary Nelson as the appointed members. This Commission represented a broad cross section of our town with extensive experience serving on Falmouth's elected bodies and its appointed boards and with area community organizations.

At our organizational meeting held on July 16, we reviewed the Commission's purpose, statutory requirements, and discussed our process and approach. Throughout our series of meetings, we had the active participation of Town Manager Nathan Poore, Assistant Town Manager Amy Lamontagne and Town Attorney Amy Tchao. In addition, on August 14 when we reviewed sections of the charter pertinent to the School Board, Superintendent Geoff Bruno and School Board Chair Danielle Tracy attended and participated. Their contributions to our discussions were valuable. The town's bond counsel Jim Saffian and Finance Director Pete McHugh also offered comment on the finance related portions of the charter.

A public comment opportunity was included at all but our organizational meeting. Unfortunately, we did not receive any public input at these sessions.

Some individual commissioners sought input from past Commission members—but we were also very lucky to have former commissioners William Lunt III, Mary Nelson and Richard Olson among our members—their historical perspectives helped enormously.

### **Goals and Results**

As with past Commissions, we were largely guided by the principal that “if it ain't broke, don't fix it.” That said, we did not shy away from discussion of any item raised by staff or commissioner.

The Commission achieved complete consensus on all but two changes. In addition, I believe the commissioners overall agreed with the goals of the changes proposed and themes reflected in those changes.

The proposed changes to the Charter can be summarized as follows:

- 1) Clearer articulation of the qualifications of both town councilors and school board members and define when elected terms begin and conclude;
- 2) Make consistent, between council and school board, sections related to the election/term, qualifications, induction to office, and the handling of vacancies for each body's respective members;
- 3) Update timeframes related to budget submittal (both town and school department) to meet current election requirements and common practice;
- 4) Increase of financial limits placed on certain expenditures within the charter
- 5) Exempt emergency and waste water appropriations and refinancing of existing bonds from the requirement to seek voter approval regardless of the amount; and
- 6) Increase number of petition signatures required to recall an elected official to 20% (the percentage necessary prior to 2008).

The Commission made every effort to take a long view and to try to imagine scenarios without reference to the specifics of any current or past situation. Given the deep and varied experience of the Commission members, I believe we were well suited to the task.

While the Commission did not rush its work, we were diligent and met frequently in order to complete our review of the Charter in time to present any changes to the voters in November 2018—an election which is expected to have a higher voter participation rate than in June 2019, the next regularly scheduled election.

I am pleased to report that we achieved unanimity on more than 90% of the proposed changes. Where unanimity was lacking, I have indicated the vote on the contested item.

Please do not interpret unanimity as indicative of a lack of discussion or of contemplation—the Commission had substantive, detailed debate throughout its review and I have the utmost confidence that all members were deliberate in their consideration of the Charter.

### **Threshold of expenditure for which seek voter approval**

One issue in particular challenged the Commission—whether to create a second question to the voters regarding the level of expenditure for a single capital improvement or for a single item of equipment as it appears in Sec. 903.

The Commission was unanimous in its agreement of all proposed changes to Sec. 903 related to exemptions to the appropriate threshold. While a majority supported increasing the threshold to \$2,000,000 there was debate as to whether this increase should appear as a second question to the voters on the ballot. The majority felt the voters should have the opportunity to weigh in specifically on the question of whether to increase the threshold.

Accordingly, we have recommended that the Council present our proposed changes to the voters in the form of two questions.

Question 1

Will be a yes/no vote on 26 proposed changes that the Commission and the Town Attorney respectfully suggest the Council submit to the public in summary form.

Question 2

Will be a yes/no vote whether to increase the expenditure amount for which a referendum is required for a single capital improvement or for a single item of equipment from the current \$1,000,000 to \$2,000,000.

The Commission owes a great debt of gratitude to Amy Lamontagne, Nathan Poore, and Amy Tchao who spent a great number of hours patiently listening and participating as well as many hours helping us explore ideas and developing appropriate language. We could not have asked for more, faster or better support.

We would also like to thank Superintendent Geoff Bruno, School Board Chair Danielle Tracy, bond counsel Jim Saffian and finance director Pete McHugh for their time and effort

As a personal aside, it was an honor and pleasure to serve alongside my fellow Commissioners. Each was willing and ready to tackle the task at hand, bringing their intelligence, insights and thorough approach to each consideration of change no matter how seemingly inconsequential. All had the interests of the town and its residents at the forefront of all deliberations.

Respectfully submitted,

Karen Farber, Chair

## Charter Review Commission – Final Report 9/18/2018

This section includes all charter revisions accompanied by a summary describing the substantive change.

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### ITEM – 1

**Sec. 201. Number, election, term.** The Town Council shall be composed of 7 members, each of whom shall be elected by the registered voters of the entire Town. Each member shall be elected for a term of 3 years, ~~and until a successor is elected and qualified.~~ The term of each member shall begin immediately after being sworn to the faithful discharge of his/her duties by the Town Clerk or his/her designee. The conclusion of the term of each member shall occur either when he/she resigns from office, is disqualified from office or at the end of the term of office which shall be upon swearing in of a new councilor-elect at the meeting required and explained in Sec. 206. No member of the Council shall be eligible for re-election for more than two consecutive terms. For purposes of this section, election is to an unexpired term of less than 18 months shall not be considered a term.

**Summary:** Section 201 is amended to clearly define the beginning and end of a Town Councilor’s term of office. Section 201 is further amended to be consistent with the amendments in Section 401 defining the beginning and end of a School Board member’s term of office.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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### ITEM – 2

**Sec. 202. Qualifications.** Councilors shall be qualified electors of the Town and shall have their principal place of residence in the Town during their terms of office. No Councilor shall hold any paid office or position of employment with the Town, School Department, or Falmouth Memorial Library. ~~except for on-call, non-ranking employees of the Fire/EMS Department and members of the Fire Police.~~ If a Councilor shall cease to possess any of these qualifications or shall be convicted of a what the Council deems a serious crime including but not limited to a crime involving fraud or dishonesty, or serious injury to or death of another, moral turpitude, ~~then~~ the Council shall, by resolution, declare the office of that Councilor vacant.

The office of Councilor shall become vacant upon resignation, death, recall, failure to qualify for the office within 10 days after written demand by the Council, forfeiture of office or failure of the Town to elect a person to the office. The Council shall, by resolution, declare the office of that Councilor vacant.

**Summary:** Section 202 is amended to clarify that neither a School Department employee nor an employee of the Falmouth Memorial Library is eligible to serve as a Town Councilor; this amendment is consistent with the amendment in Section 402 governing restrictions on qualifications of School Board members. Section 202 is further amended to eliminate the exception allowing Fire/EMS Department employees to be eligible to serve as a Town Councilor. Fire/EMS Department employees were historically volunteers but are now part time paid “call” employees. Finally, Section 202 is further amended to clarify the types of crimes that could disqualify a person from serving as a Town Councilor; this amendment is consistent with the amendment in Section 402 clarifying the types of crimes that could disqualify a person from serving as a School Board member.

**Charter Commission Vote:** 7 in favor; 1 against (William Lunt); and (1 Commissioner absent)

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**ITEM – 3**

**Sec. 204. Enumeration of Powers.** Without limitation of the foregoing, the Council shall have the power to:

204.1 Appoint the Town Manager, in accordance with Section ~~217~~ 216 hereof, and appoint the Town Attorney, the Board of Assessment Review, the Board of Zoning Appeals, the Planning Board and all other statutory and advisory boards, commissions and committees. It may remove the Town Manager in accordance with Section ~~217~~216 hereof and may remove any of the other above appointees ~~after providing 30 days written notice of such intent, with reasons therefore, and providing the appointee an opportunity for hearing;~~ with or without cause.

**Summary:** Section 204.1 is amended to correct a reference to another section of the Charter and to clarify that the Town Council has the authority to remove any of its appointees with or without cause.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 4**

**Sec. 206. Induction of Council into office.** The Town Council shall meet at the usual place for holding meetings at ~~87~~ P.M. on the 3rd Monday in June following the regular Town election or at such other time or day during that same week as the Town Clerk may choose for convenience of the Town Council, upon adequate notice to the public. At said meeting Councilors-elect shall be sworn to the faithful discharge of their duties by ~~a notary public or by the Town Clerk or his/her designee.~~ Councilors-elect who are elected into office at the regular municipal election in June and not filling a partial term, shall not be eligible to be sworn to their faithful discharge of their duties until the meeting described in this section.

**Summary:** Section 206 is amended to change the time of the annual meeting following the regular Town elections and to clarify when a newly elected Town Councilor is to be sworn into office.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 5**

**Sec. 211. Vacancies in-on Council.** If a seat ~~in-on~~ the Council becomes vacant ~~more than 6 months prior to the next regular Town election,~~ the vacancy shall be filled for the unexpired term at the next municipal or state election. ~~within 60 days from the date that the vacancy occurred.~~ In the event that the vacancy occurs within 60 days of the next regular municipal or state election, the vacancy shall be filled for the unexpired term at the next regular municipal or state election after the election that is within 60 days or, at the option of the Town Council, by a special election, the warrant for which shall, upon the vote of the Town Council, be issued by a member of the Town Council, by vote designated for that duty. ~~by a special election, the warrant for which shall, upon the vote of the Town Council, be issued by a member of the Town Council, by vote designated for that duty.~~

**Summary:** Section 211 is amended to provide that a vacancy on the Council will normally be filled at the next regular municipal or state election. Section 211 is further amended to give discretion to the Town Council, in the event a seat on the Council becomes vacant within 60 days of the next regular

Town election, to have a special election to fill a vacancy in the office of Town Council. These amendments in Section 211 are consistent with the amendments in Section 403 governing the filling of vacancies on the School Board.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 6**

**Sec. 213. Public Hearing on Ordinances.** Notwithstanding Section 902, any A-proposed ordinance ~~shall~~ ~~may~~ be introduced in writing by any Councilor to the agenda of any regular or special meeting of the Council. Upon introduction of an ordinance, the clerk shall distribute a copy to each Councilor and to the Town Manager; and shall file a reasonable number of printed copies in the office of the clerk and shall cause to be published, in print, the wording of the proposed ordinance or a title descriptive of its contents and purpose, together with notice of the time and place of public hearing thereon. Except as otherwise required herein or by the laws of the State of Maine, documents may be distributed and made available to the public electronically. The public hearing shall follow the publication by at least 14 days, may be held separately or in connection with a regular or special meeting of the Council and may be adjourned from time to time. All persons interested shall have a reasonable opportunity to be heard, and shall be provided access to the same documents considered by the Council. An ordinance shall become effective upon its adoption by the Council or at such later time as it may specify. After the hearing the Council may adopt the ordinance with or without amendment or reject it; but in no case shall the ordinance be adopted or rejected in less than 14 days after the public hearing. If an ordinance is amended so as to change substantially its meaning, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance. The above procedure may be waived only as provided in the following section dealing with emergency ordinances. The Council may enact rules controlling re-introduction of defeated ordinances.

**Summary:** Section 213 is amended to ensure that there is no conflict with Section 902 of the Charter.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM - 7**

**213.1** Notwithstanding any other provision of this Charter, to meet a public emergency affecting life or health or property or the public peace, the Council may adopt one or more emergency ordinances, with the statement of the emergency being a part of the preamble to the ordinance. The declaration of such emergency by the Council shall be conclusive. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least 5 Councilors shall be required for adoption. After adoption, the ordinance shall be made available to the public in the Town Hall and such other places as the Council may designate. It shall become effective upon its adoption or at such later time as it may specify. Every emergency ordinance ~~except one authorizing the issuance of emergency bonds or notes~~ shall stand repealed as of the 61st day following the date of its adoption, but this shall not prevent the re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.



**Summary:** Section 213.1 is amended to eliminate the exemption of ordinances authorizing issuance of emergency bonds. Emergency related expenditures and bonds are addressed in the amendments to Section 903.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 8**

**Sec. 216. Appointment or removal of Town Manager.** The Council shall appoint an officer of the Town who shall have the title of Town Manager and shall have the powers and perform the duties described in this Charter. The Town Manager shall be appointed for a definite or an indefinite term and may be removed by a vote of a majority of the Town Council with or without cause. No Councilor shall receive such appointment during the term for which the Councilor shall have been elected, nor within one year after the expiration of the term, nor shall any Councilor act in that capacity.

Notwithstanding the foregoing, the Council, ~~may~~shall, with the advice and review of the Town Attorney, enter into an employment contract with the Town Manager which contract may, without limitation, provide for reasonable and ordinary severance provisions and severance payments in the event that the Town Manager is removed without cause.

**Summary:** Section 216 is amended to require the Town Council to enter into an employment contract with the Town Manager.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 9**

**Sec. 218. Council not to interfere in employee appointments or removals.** The Town Manager shall have exclusive authority with respect to the hiring and firing of Town employees. Neither the Council nor any of its members shall direct or request the appointment of any person to or the removal from office by the Town Manager or by any subordinates. Except for the purposes of inquiry, or ~~investigation~~communication with any employee, ~~and or~~ as part of an ~~annual~~evaluation of the Town Manager, the Council and its members shall deal with the administrative service solely through the Town Manager, and neither the Council nor any member thereof shall give orders to any subordinates of the Town Manager, either publicly or privately.

**Summary:** Section 218 is amended to clarify the circumstances under which Councilors may communicate directly with employees of the town.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 10**

**Sec. 219. Periodic Charter Review.** At least once every 10 years, the Town Council shall, on its own motion and without requiring a petition, create a Charter Review Commission in the manner prescribed by the Home Rule statute, 30-A M.R.S.A. Section ~~2102~~2101 et seq.

**Summary:** Section 219 is amended to correct a reference to a state law.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 11**

**Sec. 305. Health Officer.** The Town Manager may appoint for an indefinite term a health officer who shall exercise such powers and perform such duties as may be conferred or imposed by law. The health officer shall meet such qualifications as may be specified generally for such positions by the State ~~Commissioner of Human Services.~~ the Department of Health and Human Services.

**Summary:** Section 305 is amended to correct the reference to a Department of the State of Maine.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 12**

**Sec. 401. Board of Education – Number, Election and Term.** The Department of Education shall be administered by a board of education hereafter referred to as the School Board which shall consist of seven (7) duly qualified electors of the Town of Falmouth who shall be nominated and elected by the registered voters of the entire Town according to the provisions of Article VIII of this Charter. Members shall be elected for a term of 3 years ~~and shall serve until their successors are elected and qualified.~~ The term of each member shall begin immediately after being sworn to the faithful discharge of his/her duties by the Town Clerk or his/her designee. The conclusion of the term for each member shall occur either when he/she resigns from office, is disqualified from office or at the end of the term of office which shall be upon the swearing in of a new member-elect at the meeting required and explained in Sec 404.

No member of the School Board shall be eligible for re-election for more than two consecutive terms. For purposes of this section, election to an unexpired term of less than 18 months shall not be considered a term. To insure continuity of service on the School Board, no fewer than two and no more than three members shall be elected annually for a full term. Except as otherwise provided by this Charter, the provisions of the statutes of the State of Maine relating to School Committee Members shall apply.

**Summary:** Section 401 is amended to clearly define the beginning and end of a School Board member's term of office. Section 401 is further amended to be consistent with the amendments in Section 201 defining the beginning and end of a Town Councilor's term of office.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 13**

**Sec. 402. Qualifications.** Members of the School Board shall be qualified electors of the Town and shall have their principal place of residence in the Town during their terms of office. No School Board member shall hold any paid office or position of employment with the School Department, Town, or Falmouth Memorial Library. If a member of the School Board ceases to possess any of these qualifications or shall be convicted of what the School Board deems a serious crime including but not limited to a crime involving fraud or dishonesty, or serious injury to or death of another, involving moral turpitude, then the office of that School Board member shall immediately become vacant. ~~Council~~ School Board shall, by resolution, declare the office of that Board member vacant.

The office of a member of the School Board shall also become vacant upon resignation, death, recall, failure to qualify for the office within 10 days after written demand by the Council, forfeiture of office or failure of the municipality to elect a person to the office. The Council School Board shall, by resolution, declare the office of that Board member vacant.

**Summary:** Section 402 is amended to exclude any Town or Falmouth Memorial Library employee from serving as a School Board Member; this amendment is consistent with the amendment in Section 202 governing restrictions on qualifications of Town Councilors. Section 402 is further amended to clarify the types of crimes that would disqualify a person from serving as a School Board member; this amendment is consistent with the amendment in Section 202 clarifying the types of crimes that could disqualify a person from serving as a Town Councilor

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 14**

**Sec. 403. Vacancy.** If a seat on the School Board becomes vacant, the vacancy shall be filled for the unexpired term at the next regular municipal or state election, provided that said election is at least 60 days from the date that the vacancy occurred. In the event that the vacancy occurs within 60 days of the next regular municipal or state election, the vacancy shall be filled for the unexpired term at the next regular municipal or state election after the election that is within 60 days, or, at the option request of the School Board, by a special election, the warrant for which shall, upon the vote of the Town Council, be issued by a member of the Town Council, by vote designated for that duty.

~~If a seat on the School Board becomes vacant for any reason more than 90 days prior to the next regularly scheduled municipal election, it shall be filled until the next municipal election by a majority vote of the Council.~~

**Summary:** Section 403 is amended to clarify that a vacancy on the School Board will normally be filled at the next regular municipal or state election. Section 403 is further amended to allow the School Board, in the event a seat on the Board becomes vacant within 60 days of the next regular Town election, to request that the Town Council have a special election to fill a vacancy in the office of the School Board. These amendments in Section 403 are consistent with the amendments in Section 211 governing the filling of vacancies on the Town Council.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 15**

**Sec. 404. Organizational Meeting and Induction of School Board into office; ~~qualifications; quorum.~~** ~~The members of the School Board shall meet for organization within fourteen days from the date of the election of new Board members which date ordinarily shall be the regular municipal election in June, their election. At said meeting, the members-elect shall be sworn to the faithful discharge of their duties by the Town Clerk or his/her designee, a notary public or by the Town Clerk, and record made thereof. The members-elect that who are elected into office at the regular municipal election in June and not filling a partial term, shall not be eligible to be sworn to their faithful discharge of their duties until the meeting described in this section. The majority of the whole number of the School Board shall be a quorum and they shall elect their own chairperson.~~

**Summary:** Section 404 is amended to clarify when a School Board Member is to be sworn into office. Section 404 is further amended to remove language governing what constitutes a quorum of the School Board, which language has been proposed to be moved into a new Section 405 of the Charter.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 16**

**Sec. 405. Quorum.** Four members of the School Board shall constitute a quorum for the transaction of business and they shall elect their own chairperson. A smaller number may adjourn from time to time or may compel attendance of absent members. At least 24 hours’ notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

**Summary:** Section 405 is a new section that addresses the requirement of what constitutes a quorum of the School Board which was formerly addressed in Section 404. This section was also changed to be consistent with the quorum requirements of the Council in Section 210.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 17**

**Sec. 4065. Powers and duties.** The School Board shall have all the powers conferred and shall perform all the duties imposed by law upon superintending school committees in regard to the care and management of the public schools of the Town, except as otherwise provided in this Charter. The School Board shall prepare budget estimates in detail of the several sums required during the ensuing budget year for the support of the public schools and at least ~~45~~ 75 days before the beginning of the budget year, the School Board shall furnish copies of such estimates to the Town Manager. All meetings of the School Board shall have due public notice and shall be recorded. No failure to give public notice or to make record of any meeting at which no vote is taken shall invalidate any action of the Board.

**Summary:** Section 405 is now section 406. Section 406 is amended to lengthen the amount of time, from 45 to 75 days prior to the beginning of each budget year, that the School Board must submit its budget to the Town Manager.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 18**

**Sec. 4067. Consolidation of the Department of Education with other school districts.** In the event that the Town becomes a member of a regional school unit, the provisions of this Article IV shall control to the extent not inconsistent with the approved Reorganization Plan and applicable law.

**Summary:** Section 406 is now section 407.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 19**

**Sec. 502. Preparation and submission of the budget.** The Town Manager, at least 35 60 days prior to the beginning of each budget year, shall submit to the Council a budget and an explanatory budget message. The budget authority of the Council shall be limited to the final determination of the total appropriation to be made to each of the several offices, departments and agencies of the Town including the department of education. This budget shall be compiled from detailed information furnished by the administrative officers and boards on blanks, forms of which shall be designated by the Town Manager, and shall contain:

**Summary:** Section 502 is amended to lengthen the amount of time, from 35 to 60 days prior to the beginning of each budget year, that the Town Council has to review the annual budget.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 20**

**Sec. 506. Expenditures and departmental revenue.** The budget for all departments, including the school department, shall include all proposed expenditures. The Town Council shall make a gross appropriation for each department, including the school department, for the ensuing municipal year. The gross appropriation for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section ~~902~~903, but the school budget shall be expended under the direction and control of the School Board.

**Summary:** Section 506 is amended to correct a reference to another section of the Charter.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 21**

**Sec. 508. Transfer of appropriations.** At the request of the Town Manager, the Council may ~~by resolution~~ transfer an unencumbered appropriation balance or portion thereof including surplus between the general accounts, except as otherwise limited by voter referendum and the laws of the State of Maine.

**Summary:** Section 508 is amended to eliminate the restriction to act on a transfer of appropriation only by resolution. This amendment will allow a transfer of appropriation by resolution, order or ordinance.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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**ITEM – 22**

**Sec. 801. Municipal elections.** The regular election for members of the Town Council and the School Board shall be held on the second Tuesday in June. Elections to fill the unexpired term of any Councilor shall be in accordance with Section 211 and elections to fill the unexpired term of any School Board member shall be in accordance with Section 403~~404~~. The Council may, ~~by resolution~~, order a special election ~~to fill vacancies in the Council or for any other~~ lawful purpose provided that, except for a state required school budget validation referendum, such special election may not be held less than sixty (60) days before or sixty (60) days after a regular municipal election or state election. If the Town becomes

a member of a regional school unit, the election for members of the school board for the regional school unit shall be held in accordance with the Reorganization Plan and the laws of the State of Maine.

**Summary:** Section 801 is amended to reference the sections of the Charter pertaining to special elections to fill vacancies on the Town Council and School Board. Section 801 is further amended to correct a reference to another section. Finally, Section 801 is amended to eliminate the restriction to act only by resolution, which will now allow action by resolution, order or ordinance.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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#### ITEM – 23

**Sec. 901.2 Petition for initiative or overrule of action of Council.**

Orders or resolves authorizing general obligation bonds issues—and/or appropriations in excess of \$~~200~~500,000 for a single capital improvement, including: buildings; infrastructure improvements or expansion; major equipment; and land; excluding, however any such order or resolve adopted with respect to a declared public emergency under Section 213.1 hereof;

If, within 60 days after the enactment of any such ordinance, order or ~~r~~resolve, a petition signed by not less than 10% of the registered voters of the Town of Falmouth is filed with the Town Clerk requesting its reference to a referendum, the Council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the Town Clerk, and shall within 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, order or resolve. Pending action by the voters of the Town, the referred ordinance, order or resolve shall be suspended from operation until it has received a vote of the majority of the voters voting on said question.

**Summary:** Section 901.2 is amended to restrict petitions on bonds to those that are general obligation bonds. This section is further amended to increase the limit of what expenditures are subject to a petition from \$200,000 to \$500,000. Finally, this section is amended to exclude any expenditure from a petition if it is for the purpose of a declared emergency under section 213.1.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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#### ITEM – 24\*

**Sec. 903. Referendum on Certain Expenditures.** The Town Council shall submit any order or resolve appropriating \$1,000,000 or more of funds raised pursuant to the Town’s power of taxation for a single capital improvement or for a single item of equipment, except any such order or resolve for appropriations (a) associated with the treatment and collection of wastewater and (b) associated with respect to a declared public emergency under Section 213.1 hereof. The Town Council shall submit ~~and~~ ~~any an order or, resolve or ordinance~~ authorizing general obligation bonds ~~issues~~ of \$1,000,000 or more for a single capital improvements or for a single item of equipment, except any such order or resolve authorizing general obligation bonds (a) adopted with respect to a declared public emergency under Section 213.1 hereof, (b) ~~issuance~~ associated with the treatment and collection of wastewater, or (c) authorizing the refunding of the Town’s outstanding bonds, to the voters at a regular or special election following at least one public hearing. These provisions shall apply whether or not payment for the capital improvements or single item of equipment is to be made in more than one fiscal year. The question shall be submitted to the voters at the next regular municipal election held not less than 30 days after the order

or, resolve or ordinance is passed; or the Council may order that the question be submitted to the voters at a special election to be held not less than 30 days from the date of the order or, resolve or ordinance. In order for the question to be passed, a majority of votes cast must favor passage and the total number of votes cast for and against the question must equal or exceed 10% of registered voters.

**Summary:** Section 903 is amended to exempt any expenditure or bond, regardless of the amount, from requiring a referendum, so long as the expenditure is related to the treatment and collection of wastewater or with respect to a declared emergency under Section 213.1. Section 903 is further amended to exempt bonds from going to referendum if they are simply being refinanced.

**Charter Commission Vote:** 6 in favor; 2 against (David Goldberg, Mary Nelson); and (1 Commissioner absent)

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**ITEM – 25\***

**Sec. 903. Referendum on Certain Expenditures.** Additional changes to Section 903 will be set forth as a separate referendum question and is summarized below.

**Summary:** Section 903 is amended to raise from \$1,000,000 to \$2,000,000 the threshold amount for single item expenditures and for bonding which must be submitted to referendum (this amendment would apply to Section 903 in its current form or as amended by Item 24).

**Charter Commission Vote:** 7 in favor; 1 against (William Lunt); and (1 Commissioner absent)

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**ITEM – 26**

**Sec. 905.1 Procedures for Recall.** The recall committee shall have 30 days from the date of issuance of appropriate petition blanks to cause the petition to be signed by ~~40~~20% of the number of registered voters. The petition shall be signed in the presence of the Town Clerk or of a registered voter of the Town who shall certify to the validity of the signatures collected. Within 10 days after the circulation period ends the Town Clerk shall certify to the Town Council as to whether the petition has been signed by not less than ~~40~~20% of the number of registered voters. Should less than ~~40~~20% of such voters sign the petition, the petition shall have no further force or effect, and no new petition action for recall of the same person can be initiated until 180 days from the end of the previous filing period.

**Summary:** Section 905.1 is amended to increase the number of registered voters to be on a petition for the recall of elected officials from 10 to 20%.

**Charter Commission Vote:** 8 in favor, 0 against; and (1 Commissioner absent)

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\*The Charter Review Commission decided to split Section 903 into two votes after a lengthy conversation. A vote was first taken on Section 903 which contained an increase from 1,000,000 to 2,000,000 or more of funds raised pursuant to the Town's power of taxation for a single capital improvement or for a single item of equipment. The vote was 7 in favor, 1 against (William Lunt); and (1 Commissioner absent). The commission debated splitting the question into two – allowing voters to choose the original charter amount of 1,000,000 or choosing the increase to 2,000,000. A vote was taken to split the question and the result was 5 in favor, 3 against (David Goldberg, Ned Kitchel, Mary Nelson); and (1 Commissioner absent). After additional debate, a vote was taken to rescind the first vote on Section 903. The result was 6 in favor, 2 against (David Goldberg, Mary Nelson); and (1 Commissioner absent). The commission split the question into two and re-voted Section 903. The final actions are recorded in Items 24 and 25.

# Appendix A

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## **Council-Manager Charter of Town of Falmouth, Maine ~~July 1, 2009~~ July 1, 2019**

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**Council-Manager Charter of Town of Falmouth**  
**July 1, 2009 July 1, 2019**

All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it.

**Article I.**

**Grant of Powers to the Town.**

**Sec. 101. Incorporation.** The inhabitants of the Town of Falmouth, within the limits as now established or as hereafter established in the manner provided by law, shall be a municipal corporation by the name of the Town of Falmouth, Maine.

**Sec. 102. Powers of the Town.** The Town shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises, and shall be subject to all the duties, liabilities and obligations, provided for herein, or otherwise pertaining to or incumbent upon said Town as a municipal corporation, or the inhabitants or municipal authorities thereof; it may enact by-laws, regulations and ordinances not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof to be recovered to the use of said Town by appropriate action. Except as otherwise provided by state law, such penalties shall be determined or set by ordinance.

The Town may acquire property within or without its corporate limits for any Town purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, mortgage, hold, manage and control such property as its interest may require.

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

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 persons, corporations, states or civil divisions or agencies thereof, or with the United States or any agency thereof.

## Article II.

### Town Council.

**Sec. 201. Number, election, term.** The Town Council shall be composed of 7 members, each of whom shall be elected by the registered voters of the entire Town. Each member shall be elected for a term of 3 years, ~~and until a successor is elected and qualified.~~ The term of each member shall begin immediately after being sworn to the faithful discharge of his/her duties by the Town Clerk or his/her designee. The conclusion of the term of each member shall occur either when he/she resigns from office, is disqualified from office or at the end of the term of office which shall be upon swearing in of a new councilor-elect at the meeting required and explained in Sec. 206. No member of the Council shall be eligible for re-election for more than two consecutive terms. For purposes of this section, election to an unexpired term of less than 18 months shall not be considered a term.

**Sec. 202. Qualifications.** Councilors shall be qualified electors of the Town and shall have their principal place of residence in the Town during their terms of office. No Councilor shall hold any paid office or position of employment with the Town, School Department, or Falmouth Memorial Library. ~~except for on-call, non-ranking employees of the Fire/EMS Department and members of the Fire Police.~~ If a Councilor shall cease to possess any of these qualifications or shall be convicted of a what the Council deems a serious crime including but not limited to a crime involving fraud or dishonesty, or serious injury to or death of another, moral turpitude, ~~then~~ the Council shall, by resolution, declare the office of that Councilor vacant.

The office of Councilor shall become vacant upon resignation, death, recall, failure to qualify for the office within 10 days after written demand by the Council, forfeiture of office or failure of the Town to elect a person to the office. The Council shall, by resolution, declare the office of that Councilor vacant.

**Sec. 203. Powers and duties.** The members of the Town Council shall be and constitute the municipal officers of the Town of Falmouth 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. 204. Enumeration of Powers.** Without limitation of the foregoing, the Council shall have power to:

204.1 Appoint the Town Manager, in accordance with Section ~~247~~ 216 hereof, and appoint the Town Attorney, the Board of Assessment Review, the Board of Zoning Appeals, the Planning Board and all other statutory and advisory boards, commissions and committees. It may remove the Town Manager in accordance with Section ~~247~~ 216 hereof and may remove any of the other above appointees ~~after providing 30 days written notice of such intent, with reasons therefore, and providing the appointee an opportunity for hearing;~~ with or without cause.

204.2 By ordinance create, change and abolish offices, departments or

agencies, other than the offices, department and agencies established by this Charter. The Council by ordinance may assign additional functions or duties to offices, departments or agencies established by this Charter but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department or agency. The Council may, however, vest in the Town Manager all or part of the duties of any office except the Department of Education;

204.3 Make, alter and repeal ordinances to the full extent permitted under the Home Rule authority granted to municipalities under the Maine Constitution and statutes;

204.4 Inquire into the conduct of any office, department or agency of the Town and inquire of or make investigation as to municipal affairs;

204.5 Adopt and modify the official maps of the Town;

204.6 Regulate and restrict land use including but not limited to: building height and number of stories, size and design of buildings and other structures, the size of yards and courts, the density of population and the location and use of land, buildings, and other structures for trade, industry, business, residence and other purposes;

204.7 Provide for safe and sanitary housing accommodations for families of low income;

204.8 Create a housing authority;

204.9 **Repealed. 1998;**

204.10 Adopt, modify and carry out plans and ordinances for the long-range planning, re-planning, improvement or redevelopment of neighborhoods and other municipal areas and for the re-planning, reconstruction and redevelopment of any area or district which may have been destroyed in whole or in part by disaster;

204.11 Act as the general legislative body of the Town with all the powers of a Town meeting. The Town Council may not delegate any of the legislative powers conferred by this Charter or by law to any official of the Town or to any statutory or advisory board, commission or committee;

204.12 Sell, exchange or donate, surplus property of the Town, both real and personal. Except as provided by ordinance, any sale shall be preceded by a competitive bidding process with publication and invitations to bid at least 30 days prior to the opening of the bids. The Council may, at its discretion, accept or reject any such bid or bids.

**Sec. 205. Compensation.** The Town Council by ordinance shall determine the compensation of Councilors and members of the School Board. No increase in compensation shall take effect until the next Town fiscal year. The Town Council, by specific order, shall set the compensation of its appointees. Salaries of the appointees of the Town Manager shall be set by the Town Manager.

**Sec. 206. Induction of Council into office.** The Town Council shall meet at the usual place for holding meetings at 8~~7~~ P.M. on the 3rd Monday in June following the regular Town election or at such other time or day during that same week as the Town Clerk may choose for convenience of the Town Council, upon adequate notice to the public. At said meeting Councilors-elect shall be sworn to the faithful discharge of their duties by ~~a notary public or by~~ the Town Clerk or his/her designee. Councilors-elect who are elected into office at the regular municipal election in June and not filling a partial term, shall not be eligible to be sworn to their faithful discharge of their duties until the meeting described in this section.

**Sec. 207. Council to judge qualifications of its members.** The Council shall be the judge of the election and qualifications of its members and for such purpose shall have power to subpoena witnesses and to require production of records, but the decision of the Council in any such case shall be subject to review by the courts.

**Sec. 208. Meetings.** The Town Council shall, at its first meeting or as soon thereafter as possible, establish by ordinance or resolution a regular place and time for holding its regular meetings, and shall meet regularly at least once a month. It shall also provide a method for calling special meetings and workshop meetings. Public notice shall be given for all meetings of the Town Council in accordance with state law. Meetings of the Town Council shall be open to the public in accordance with 1 M.R.S.A. Section 401 et seq. as amended and shall be recorded. Any communication with the Council as to the rezoning of land shall be open and available to the public.

**Sec. 209. Chairperson.** At its first meeting or as soon thereafter as practicable the Council shall elect, by majority vote of the entire Council, one of its members for the ensuing year as chairperson and one of its members as vice-chairperson, and the Council shall fill, for an unexpired term, any vacancy in the office of chairperson or vice-chairperson that may occur. The chairperson shall be recognized as head of the Town government for all ceremonial purposes and by the Governor for purposes of military law, but the chairperson shall have no regular administrative duties. In the temporary absence or disability of the chairperson, the vice-chairperson shall exercise all the powers of the chairperson during such temporary absence or disability of the chairperson. It shall be the duty of the chairperson to (1) preside at all meetings of the Council; (2) develop, after consultation with the Town Manager, agenda for Council meetings, provided that no Councilor shall be denied the right to place an item on the agenda; (3) after consultation with the Council, represent the Council in all dealings with the Town Manager and with all statutory and advisory boards, commissions and committees in person or by delegation.

209.1 The Council may, by vote of 5 Councilors, after public notice, notice in writing to the chairperson and hearing, remove the chairperson with or without cause, provided that the chairperson may elect to waive public notice and/or public hearing.

**Sec. 210. Quorum.** Four members of the Town Council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time or may compel attendance of absent members. At least 24 hours' notice of the time and place of holding such

adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

**Sec. 211. Vacancies in on Council.** If a seat ~~in~~ on the Council becomes vacant ~~more than 6 months prior to the next regular Town election,~~ the vacancy shall be filled for the unexpired term at the next municipal or state election. ~~within 60 days from the date that the vacancy occurred.~~ In the event that the vacancy occurs within 60 days of the next regular municipal or state election, the vacancy shall be filled for the unexpired term at the next regular municipal or state election after the election that is within 60 days or, at the option of the Town Council, by a special election, the warrant for which shall, upon the vote of the Town Council, be issued by a member of the Town Council, by vote designated for that duty. ~~by a special election, the warrant for which shall, upon the vote of the Town Council, be issued by a member of the Town Council, by vote designated for that duty.~~

**Sec. 212. Rules of procedure; journal.** The Council shall determine its own rules and order of business. It shall keep a record of its proceedings and the record shall be open to public inspection.

**Sec. 213. Public Hearing on Ordinances.** Notwithstanding Section 902, any ~~A~~ proposed ordinance shall ~~may~~ be introduced in writing by any Councilor to the agenda of any regular or special meeting of the Council. Upon introduction of an ordinance, the clerk shall distribute a copy to each Councilor and to the Town Manager; and shall file a reasonable number of printed copies in the office of the clerk and shall cause to be published, in print, the wording of the proposed ordinance or a title descriptive of its contents and purpose, together with notice of the time and place of public hearing thereon. Except as otherwise required herein or by the laws of the State of Maine, documents may be distributed and made available to the public electronically. The public hearing shall follow the publication by at least 14 days, may be held separately or in connection with a regular or special meeting of the Council and may be adjourned from time to time. All persons interested shall have a reasonable opportunity to be heard, and shall be provided access to the same documents considered by the Council. An ordinance shall become effective upon its adoption by the Council or at such later time as it may specify. After the hearing the Council may adopt the ordinance with or without amendment or reject it; but in no case shall the ordinance be adopted or rejected in less than 14 days after the public hearing. If an ordinance is amended so as to change substantially its meaning, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance. The above procedure may be waived only as provided in the following section dealing with emergency ordinances. The Council may enact rules controlling re-introduction of defeated ordinances.

213.1 Notwithstanding any other provision of this Charter, to meet a public emergency affecting life or health or property or the public peace, the Council may adopt one or more emergency ordinances, with the statement of the emergency being a part of the preamble to the ordinance. The declaration of such emergency by the Council shall be conclusive. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least 5 Councilors shall be required for adoption. After adoption,

the ordinance shall be made available to the public in the Town Hall and such other places as the Council may designate. It shall become effective upon its adoption or at such later time as it may specify. Every emergency ordinance ~~except one authorizing the issuance of emergency bonds or notes~~ shall stand repealed as of the 61st day following the date of its adoption, but this shall not prevent the re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

**Sec. 214. Town Clerk.** The Town Clerk shall act as clerk of the Council and shall keep a public record of all proceedings of the Council.

**Sec. 215. Independent annual audit.** The Council shall designate the State Department of Audit or private certified public accountants who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the Town government and shall submit their report to the Council, and the Town Manager. Such accountant shall not maintain any accounts or records of the Town business, but shall post-audit the books and documents kept by the Department of Finance and any separate or subordinate accounts kept by the Department of Finance and any separate or subordinate accounts kept by any other office, department, or agency of the Town government. The Council shall designate one or more members as a finance committee to review such auditing and to make an annual report and recommendations to the Council and the Town Manager regarding financial procedures and controls.

**Sec. 216. Appointment or removal of Town Manager.** The Council shall appoint an officer of the Town who shall have the title of Town Manager and shall have the powers and perform the duties described in this Charter. The Town Manager shall be appointed for a definite or an indefinite term and may be removed by a vote of a majority of the Town Council with or without cause. No Councilor shall receive such appointment during the term for which the Councilor shall have been elected, nor within one year after the expiration of the term, nor shall any Councilor act in that capacity.

Notwithstanding the foregoing, the Council, ~~may~~shall, with the advice and review of the Town Attorney, enter into an employment contract with the Town Manager which contract may, without limitation, provide for reasonable and ordinary severance provisions and severance payments in the event that the Town Manager is removed without cause.

**Sec. 217. Repealed 2009.**

**Sec. 218. Council not to interfere in employee appointments or removals.** The Town Manager shall have exclusive authority with respect to the hiring and firing of Town employees. Neither the Council nor any of its members shall direct or request the appointment of any person to or the removal from office by the Town Manager or by any subordinates. Except for the purposes of inquiry, or investigation communication with any employee, and or as part of an ~~annual~~ evaluation of the Town Manager, the Council and its members shall deal with the administrative service solely through the Town Manager, and neither the Council nor any

member thereof shall give orders to any subordinates of the Town Manager, either publicly or privately.

**Sec. 219. Periodic Charter Review.** At least once every 10 years, the Town Council shall, on its own motion and without requiring a petition, create a Charter Review Commission in the manner prescribed by the Home Rule statute, 30-A M.R.S.A. Section 2102-2101 et seq.

### **Article III.**

#### **Town Manager.**

**Sec. 301. Town Manager, qualifications.** The Town Manager shall be chosen by the Council solely on the basis of character and executive and administrative qualifications with special reference to actual experience in, or knowledge of accepted practice in respect to the duties of office as hereinafter set forth. At the time of appointment, the Town Manager need not be a resident of the Town or State.

**Sec. 302. Town Manager; chief administrator.** The Town Manager shall be the chief administrative officer and the head of the administrative branch of the Town government, and shall be responsible to the Council for the proper administration of all affairs of the Town. The Town Manager shall have the power and shall be required to:

302.1 Appoint, prescribe the duties of, and, when necessary for the good of the service, remove all employees of the Town, except as otherwise provided herein, and except as the Town Manager may authorize the head of a department or office to appoint and remove subordinates in such department or office. In addition to permitted Council communications pursuant to Section 218, the Town Manager may authorize municipal staff and agents to communicate with the Council or any of its members, if the Town Manager determines that such communication will facilitate the efficient or effective administration of the affairs of the Town.

The decision of the Town Manager, or other appointing officer, shall be final and there shall be no appeal therefrom to any other office or body except as allowed by State or Federal law;

302.2 Prepare the budget annually, submit it to the Council and be responsible for its administration after adoption;

302.3 Prepare and submit to the Council, as promptly as possible, at the end of the fiscal year a complete report on the finances of the Town for the preceding fiscal year, and further cause, as promptly as possible, an annual Town Report to be published and made available to the public after the end of the calendar year;

302.4 Attend the meetings of the Council, and keep the Council advised as to the business and financial condition and future needs of the Town and to furnish the Council with all available facts, figures, and data connected therewith when requested.

302.5 See that all laws and ordinances governing the Town are faithfully executed;

302.6 Act as purchasing agent for all departments of the Town, except the School Department;

302.7 Perform such other duties as may be prescribed by this Charter or required of the Town Manager by the Council, not inconsistent with this Charter;

302.8 **Repealed. 1998.**

**Sec. 303. Absence of Town Manager.** By letter filed with the Town Clerk the Town Manager shall designate, subject to approval by the Council, a qualified person to exercise the powers and perform the duties of the Town Manager during the Town Manager's temporary absence or disability. During such absence or disability, the Council may revoke such designation at any time and appoint another person to serve until the Town Manager shall return or the Town Manager's disability shall cease. In the event of failure of the Town Manager to make such designation, the Council may by resolve or order appoint a qualified person to perform the duties of the Town Manager until the Town Manager shall return or until the Town Manager's disability shall cease.

**Sec. 304. Reserved.**

**Sec. 305. Health Officer.** The Town Manager may appoint for an indefinite term a health officer who shall exercise such powers and perform such duties as may be conferred or imposed by law. The health officer shall meet such qualifications as may be specified generally for such positions by the State ~~Commissioner of Human Services.~~ the Department of Health and Human Services.

## Article IV.

### Department of Education

**Sec. 401. Board of Education - Number, Election and Term.** The Department of Education shall be administered by a board of education hereafter referred to as the School Board which shall consist of seven (7) duly qualified electors of the Town of Falmouth who shall be nominated and elected by the registered voters of the entire Town according to the provisions of Article VIII of this Charter. ~~Members shall be elected for a term of 3 years and shall serve until their successors are elected and qualified. The term of each member shall begin immediately after being sworn to the faithful discharge of his/her duties by the Town Clerk or his/her designee. The conclusion of the term for each member shall occur either when he/she resigns from office, is disqualified from office or at the end of the term of office which shall be upon the swearing in of a new member-elect at the meeting required and explained in Sec 404.~~

No member of the School Board shall be eligible for re-election for more than two consecutive terms. For purposes of this section, election to an unexpired term of less than 18 months shall not be considered a term. To insure continuity of service on the School Board, no fewer than two and no more than three members shall be elected annually for a full term. Except as



otherwise provided by this Charter, the provisions of the statutes of the State of Maine relating to School Committee Members shall apply.

**Sec. 402. Qualifications.** Members of the School Board shall be qualified electors of the Town and shall have their principal place of residence in the Town during their terms of office. No School Board member shall hold any paid office or position of employment with the School Department, Town, or Falmouth Memorial Library. If a member of the School Board ceases to possess any of these qualifications or shall be convicted of what the School Board deems a serious crime including but not limited to a crime involving fraud or dishonesty, or serious injury to or death of another, involving moral turpitude, then the office of that School Board member shall immediately become vacant. Council School Board shall, by resolution, declare the office of that Board member vacant.

The office of a member of the School Board shall also become vacant upon resignation, death, recall, failure to qualify for the office within 10 days after written demand by the Council, forfeiture of office or failure of the municipality to elect a person to the office. The Council School Board shall, by resolution, declare the office of that Board member vacant.

**Sec. 403. Vacancy.** If a seat on the School Board becomes vacant, the vacancy shall be filled for the unexpired term at the next regular municipal or state election, provided that said election is at least 60 days from the date that the vacancy occurred. In the event that the vacancy occurs within 60 days of the next regular municipal or state election, the vacancy shall be filled for the unexpired term at the next regular municipal or state election after the election that is within 60 days, or, at the option request of the School Board, by a special election, the warrant for which shall, upon the vote of the Town Council, be issued by a member of the Town Council, by vote designated for that duty.

~~If a seat on the School Board becomes vacant for any reason more than 90 days prior to the next regularly scheduled municipal election, it shall be filled until the next municipal election by a majority vote of the Council.~~

**Sec. 404. Organizational Meeting and Induction of School Board into office; qualifications; quorum.** ~~The members of the School Board shall meet for organization within fourteen days from the date of the election of new Board members which date ordinarily shall be the regular municipal election in June. their election. At said meeting, the members-elect shall be sworn to the faithful discharge of their duties by the Town Clerk or his/her designee. a notary public or by the Town Clerk, and record made thereof. The members-elect that who are elected into office at the regular municipal election in June and not filling a partial term, shall not be eligible to be sworn to their faithful discharge of their duties until the meeting described in this section. The majority of the whole number of the School Board shall be a quorum and they shall elect their own chairperson.~~

**Sec. 405. Quorum.** Four members of the School Board shall constitute a quorum for the transaction of business and they shall elect their own chairperson. A smaller number may adjourn from time to time or may compel attendance of absent members. At least 24 hours' notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at the meeting from which adjournment was taken.

**Sec. 4065. Powers and duties.** The School Board shall have all the powers conferred and shall perform all the duties imposed by law upon superintending school committees in regard to the care and management of the public schools of the Town, except as otherwise provided in this Charter. The School Board shall prepare budget estimates in detail of the several sums required during the ensuing budget year for the support of the public schools and at least ~~45-75~~ days before the beginning of the budget year, the School Board shall furnish copies of such estimates to the Town Manager. All meetings of the School Board shall have due public notice and shall be recorded. No failure to give public notice or to make record of any meeting at which no vote is taken shall invalidate any action of the Board.

**Sec. 4067. Consolidation of the Department of Education with other school districts.** In the event that the Town becomes a member of a regional school unit, the provisions of this Article IV shall control to the extent not inconsistent with the approved Reorganization Plan and applicable law.

## **Article V.**

### **Budget.**

**Sec. 501. Fiscal year.** The fiscal year of the Town government shall begin the first day of July and shall end the 30th day of June of each calendar year. Such fiscal year shall constitute the budget and accounting year as used in this chapter. The term “budget year” shall mean the fiscal year for which any particular budget is adopted and in which it is administered.

**Sec. 502. Preparation and submission of the budget.** The Town Manager, at least ~~35-60~~ days prior to the beginning of each budget year, shall submit to the Council a budget and an explanatory budget message. The budget authority of the Council shall be limited to the final determination of the total appropriation to be made to each of the several offices, departments and agencies of the Town including the department of education. This budget shall be compiled from detailed information furnished by the administrative officers and boards on blanks, forms of which shall be designated by the Town Manager, and shall contain:

502.1 Exact statement of the financial condition of the Town including all dedicated and undedicated fund balances;

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

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

502.4 Such other information as may be required by the Town Council.

The proposed budget prepared by the Town Manager shall be reviewed by the Town Council which shall approve the budget with or without amendments. The Town Council shall fix the time and place for holding a public hearing on such budget, and shall give a public notice of such hearing. The Council shall thereafter review the budget and adopt it, with or without change, no later than 60 days from the beginning of the fiscal year. In the event the Council shall fail to adopt the budget within said 60-day period, the budget as presented by the Town Manager shall automatically become the budget for the fiscal year.

**Sec. 503. Budget establishes appropriations.** From the date of adoption of the budget, the several amounts stated therein as proposed appropriations shall be and become appropriated to the several agencies, departments and purposes therein named.

**Sec. 504. Budget establishes amount to be raised by property tax; certification to Town Assessor.** From the date of adoption of the budget, the amounts stated therein as the amount to be raised by property tax shall constitute a determination of the amount of the levy for the purposes of the Town in the corresponding tax year. A copy of the budget as finally adopted shall be certified by the Town Clerk and filed by the Town Clerk with the Town Assessor, whose duty it shall be to levy such taxes for the corresponding year.

**Sec. 505. Budget summary.** At the head of the budget there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, stating separately the amount to be raised by property tax, and shall be itemized also by departments and kinds of expenditures, in such a manner as to present to taxpayers a simple and clear summary of the detailed estimates of the budget.

**Sec. 506. Expenditures and departmental revenue.** The budget for all departments, including the school department, shall include all proposed expenditures. The Town Council shall make a gross appropriation for each department, including the school department, for the ensuing municipal year. The gross appropriation for each department shall not be exceeded except by consent of the Council and subject to the provisions of Section ~~902903~~, but the school budget shall be expended under the direction and control of the School Board.

**Sec. 507. Work program; allotments.** Before the beginning of the budget year, the head of each office, department or agency shall submit to the Town Manager, when required by the Town Manager, a work program of the year, which program shall show the requested allotments of appropriations for such office, department or agency, by stated periods, for the entire budget year. The Town Manager shall review the requested allotments in the light of the work program of the office, department or agency concerned, and may revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total of appropriations available to said office, department or agency for the budget year.

**Sec. 508. Transfer of appropriations.** At the request of the Town Manager, the Council may ~~by resolution~~ transfer an unencumbered appropriation balance or portion thereof including

surplus between the general accounts, except as otherwise limited by voter referendum and the laws of the State of Maine.

**Sec. 509. Interim expenditures.** In the period between the beginning of the fiscal year and the appropriations of funds, the Council may authorize expenditures for current departmental expenses chargeable to the appropriations for the year, when made, in amounts sufficient to cover the necessary expenses of the various departments, except as otherwise limited by voter referendum and the laws of the State of Maine.

**Sec. 510. Effect of School Consolidation.** If the Town becomes a member of a regional school unit, school budget approval shall be governed by applicable law.

## **Article VI.**

### **Tax Administration.**

**Sec. 601. Assessor.** There shall be established a division of assessment, the head of which shall be the Town Assessor. The Town Manager shall have exclusive authority with respect to the appointment and firing of the Town Assessor. The Town 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 may exercise, and may now or hereafter be subject to, under the laws of the State of Maine.

**Sec. 602. Board of Assessment Review; appointments; vacancies.** There shall be a Board of Assessment Review to consist of five (5) members who shall be appointed by the Town Council, for a term of three (3) years. All members shall be appointed for terms of three (3) years or until their successors are duly appointed and qualified. Compensation, if any, to such members shall be determined by the Town Council. Vacancies in the membership of such board shall be filled by appointment by the Council for the unexpired term. For purposes of this section, appointment to an unexpired term of less than eighteen (18) months shall not be considered a term.

**Sec. 603. Board of Assessment Review; powers and duties.** The Board of Assessment Review shall have the power to:

603.1 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;

603.2 Administer oaths;

603.3 Take testimony;

603.4 Hold hearings;

603.5 Adopt regulations regarding the procedure of assessment review.

## Article VII.

### Municipal Development.

**Sec. 701. Planning Board.** There shall be a Town Planning Board which shall be appointed, have such powers and perform such duties as are provided by the laws of the State of Maine and the ordinances duly adopted by the Council. Members of the Planning Board shall be eligible for three consecutive three-year terms, except as otherwise provided by the laws of the State of Maine. For the purposes of this section, an appointment as an alternate member or an appointment to an unexpired term of less than 18 months shall not be considered a term.

**Sec. 702. Zoning ordinance.** There shall be a zoning ordinance as provided by state law.

**Sec. 703. Board of Zoning Appeals.** There shall be a Board of Zoning Appeals which shall be appointed, have such powers and perform such duties as are provided by the laws of the State of Maine and ordinances duly adopted by the Council. Members of the Board of Zoning Appeals shall be eligible for three consecutive three-year terms, except as otherwise provided by the laws of the State of Maine. For the purposes of this section, an appointment as an alternate member or an appointment to an unexpired term of less than 18 months shall not be considered a term.

**Sec. 704. Long Range Planning Committee.** There shall be a Long Range Planning Committee which shall be appointed, and have such powers and perform such duties as are provided by the laws of the State of Maine and ordinances duly adopted by the Council. Members of the Long Range Planning Committee shall be eligible for three consecutive three-year terms. For the purposes of this section, an appointment as an alternate member or an appointment to an unexpired term of less than 18 months shall not be considered a term.

## Article VIII.

### Nominations and Elections.

**Sec. 801. Municipal elections.** The regular election for members of the Town Council and the School Board shall be held on the second Tuesday in June. Elections to fill the unexpired term of any Councilor shall be in accordance with Section 211 and elections to fill the unexpired term of any School Board member shall be in accordance with Section 403404. The Council may, ~~by resolution,~~ order a special election ~~to fill vacancies in the Council or for any other~~ lawful purpose provided that, except for a state required school budget validation referendum, such special election may not be held less than sixty (60) days before or sixty (60) days after a regular municipal election or state election. If the Town becomes a member of a regional school unit, the election for members of the school board for the regional school unit shall be held in accordance with the Reorganization Plan and the laws of the State of Maine.

**Sec. 802. Nomination.** Registered voters of the Town shall be nominated for the Council or School Board by use of nomination papers in accordance with the State Statutes governing Town elections. In no event shall a candidate's political affiliation appear on the Town ballot.

**Sec. 803. Municipal elections.** Provisions of the laws of the State of Maine relating to the qualifications of electors, registration, the manner of voting, the duties of election officers and all other particulars respective 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. 804. Voting places.** The voting places established for state elections shall be established for municipal elections.

**Sec. 805. Election officials.** The Town Council shall annually appoint a warden and a ward clerk, in addition to the regular ballot clerks, for each voting place.

## Article IX.

### Initiative and Referendum.

**Sec. 901. Petition for initiative or overrule of action of Council.** The following shall be subject to voter initiative or overrule by referendum as follows:

901.1 All ordinances;

901.2 Orders or resolves authorizing general obligation bonds issues and/or appropriations in excess of \$~~200~~500,000 for a single capital improvement, including: buildings; infrastructure improvements or expansion; major equipment; and land; excluding, however any such order or resolve adopted with respect to a declared public emergency under Section 213.1 hereof;

If, within 60 days after the enactment of any such ordinance, order or ~~f~~-resolve, a petition signed by not less than 10% of the registered voters of the Town of Falmouth is filed with the Town Clerk requesting its reference to a referendum, the Council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the Town Clerk, and shall within 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, order or resolve. Pending action by the voters of the Town, the referred ordinance, order or resolve shall be suspended from operation until it has received a vote of the majority of the voters voting on said question.

**Sec. 902. Petition for enactment of ordinances.** Not less than 10% of the registered voters of the Town may at any time petition for the enactment of any proposed lawful ordinance by filing

such petition, including the complete text of such ordinance, with the Town Clerk. The Council shall call a public hearing to be held within 30 days from the date of the filing of such petition with the Town Clerk, and shall within 30 days after said public hearing call a special Town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the call for said Town election, such ordinance shall be enacted by the Council. Such ordinance shall take effect on the 10th day after the conclusion of such referendum, provided a majority of those voting hereon shall have voted in the affirmative.

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

**Sec. 903. Referendum on Certain Expenditures.** The Town Council shall submit any order or resolve appropriating \$1,000,000 or more of funds raised pursuant to the Town's power of taxation for a single capital improvement or for a single item of equipment, except any such order or resolve for appropriations (a) associated with the treatment and collection of wastewater and (b) associated with respect to a declared public emergency under Section 213.1 hereof. ~~The Town Council shall submit and any an order or, resolve or ordinance~~ authorizing general obligation bonds issues of \$1,000,000 or more for a single capital improvements or for a single item of equipment, except any such order or resolve authorizing general obligation bonds (a) adopted with respect to a declared public emergency under Section 213.1 hereof, (b) issuance associated with the treatment and collection of wastewater, or (c) authorizing the refunding of the Town's outstanding bonds, to the voters at a regular or special election following at least one public hearing. These provisions shall apply whether or not payment for the capital improvements or single item of equipment is to be made in more than one fiscal year. The question shall be submitted to the voters at the next regular municipal election held not less than 30 days after the order or, resolve or ordinance is passed; or the Council may order that the question be submitted to the voters at a special election to be held not less than 30 days from the date of the order or, resolve or ordinance. In order for the question to be passed, a majority of votes cast must favor passage and the total number of votes cast for and against the question must equal or exceed 10% of registered voters.

**903.1 Defeated bond issues and appropriations.** Every bond issue and appropriation submitted to the voters by the Council or by petition at a regular or special election under Article IX Sections 901 and 903 which fails of passage shall not be presented to the voters a second time in the same or substantially the same form until the twelfth month following the date of the election at which it was defeated, unless otherwise provided by the laws of the State of Maine pertaining to a regional school unit of which the Town is a member.

**903.2** Land acquisition shall be considered a capital improvement for purposes of this Charter but preliminary studies, designs, surveying, testing and similar activities that are undertaken prior to the acquisition of land or the construction or rehabilitation of a project shall not be considered capital improvements for purposes of this Charter.





**Sec. 1004. Existing contracts not invalidated, unless inconsistent.** All rights, actions, proceedings, prosecutions and contracts of the Town or any of its departments, pending or unexecuted when this Charter goes into effect and not inconsistent herewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

**Sec. 1005. Repealed 2009.**

**Sec. 1006. Oath of office.** Every officer of the Town shall, before entering upon the duties of the 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 Falmouth, and will faithfully discharge the duties of the office of .....

**Sec. 1007. Ordinances not inconsistent continue in force.** All ordinances of the Town of Falmouth in force at the time when this Charter takes effect, not inconsistent with the provisions of this Charter, shall continue in force until amended or repealed.

**Sec. 1008. Repealed 1998.**

**Sec. 1009. Conflicts of Interest.** Any elected official, employee or member of a Town board, commission or committee who violates or causes a violation of state law relating to conflicts of interest shall be guilty of malfeasance in office or position and shall forfeit said office or position. Violation of this section with the knowledge of the person or corporation contracting with or making a purchase or sale to the Town shall, at the option of the Town, render the contract or sale voidable.

# Ballot Questions

## FIRST CHARTER MODIFICATION QUESTION

Shall the Town approve the Charter modifications recommended by the Charter Review Commission and summarized below?

### Summary

- Section 201 is amended to clearly define the beginning and end of a Town Councilor's term of office. Section 201 is further amended to be consistent with the amendments in Section 401 defining the beginning and end of a School Board member's term of office.
- Section 202 is amended to clarify that neither a School Department employee nor an employee of the Falmouth Memorial Library is eligible to serve as a Town Councilor; this amendment is consistent with the amendment in Section 402 governing restrictions on qualifications of School Board members. Section 202 is further amended to eliminate the exception allowing Fire/EMS Department employees to be eligible to serve as a Town Councilor. Fire/EMS Department employees were historically volunteers but are now part time paid "call" employees. Finally, Section 202 is further amended to clarify the types of crimes that could disqualify a person from serving as a Town Councilor; this amendment is consistent with the amendment in Section 402 clarifying the types of crimes that could disqualify a person from serving as a School Board member.
- Section 204.1 is amended to correct a reference to another section of the Charter and to clarify that the Town Council has the authority to remove any of its appointees with or without cause.
- Section 206 is amended to change the time of the annual meeting following the regular Town elections and to clarify when a newly elected Town Councilor is to be sworn into office.
- Section 211 is amended to provide that a vacancy on the Council will normally be filled at the next regular municipal or state election. Section 211 is further amended to give discretion to the Town Council, in the event a seat on the Council becomes vacant within 60 days of the next regular Town election, to have a special election to fill a vacancy in the office of Town Council. These amendments in Section 211 are consistent with the amendments in Section 403 governing the filling of vacancies on the School Board.
- Section 213 is amended to ensure that there is no conflict with Section 902 of the Charter.
- Section 213.1 is amended to eliminate the exemption of ordinances authorizing issuance of emergency bonds. Emergency related expenditures and bonds are addressed in the amendments to Section 903.
- Section 216 is amended to require the Town Council to enter into an employment contract with the Town Manager.
- Section 218 is amended to clarify the circumstances under which Councilors may communicate directly with employees of the town.
- Section 219 is amended to correct a reference to a state law.
- Section 305 is amended to correct the reference to a Department of the State of Maine.
- Section 401 is amended to clearly define the beginning and end of a School Board member's term of office. Section 401 is further amended to be consistent with the amendments in Section 201 defining the beginning and end of a Town Councilor's term of office.

- Section 402 is amended to exclude any Town or Falmouth Memorial Library employee from serving as a School Board Member; this amendment is consistent with the amendment in Section 202 governing restrictions on qualifications of Town Councilors. Section 402 is further amended to clarify the types of crimes that would disqualify a person from serving as a School Board member; this amendment is consistent with the amendment in Section 202 clarifying the types of crimes that could disqualify a person from serving as a Town Councilor
- Section 403 is amended to clarify that a vacancy on the School Board will normally be filled at the next regular municipal or state election. Section 403 is further amended to allow the School Board, in the event a seat on the Board becomes vacant within 60 days of the next regular Town election, to request that the Town Council have a special election to fill a vacancy in the office of the School Board. These amendments in Section 403 are consistent with the amendments in Section 211 governing the filling of vacancies on the Town Council.
- Section 404 is amended to clarify when a School Board Member is to be sworn into office. Section 404 is further amended to remove language governing what constitutes a quorum of the School Board, which language has been proposed to be moved into a new Section 405 of the Charter.
- Section 405 is a new section that addresses the requirement of what constitutes a quorum of the School Board which was formerly addressed in Section 404. This section was also changed to be consistent with the quorum requirements of the Council in Section 210.
- Section 405 is now section 406. Section 406 is amended to lengthen the amount of time, from 45 to 75 days prior to the beginning of each budget year, that the School Board must submit its budget to the Town Manager.
- Section 406 is now section 407.
- Section 502 is amended to lengthen the amount of time, from 35 to 60 days prior to the beginning of each budget year, that the Town Council has to review the annual budget.
- Section 506 is amended to correct a reference to another section of the Charter.
- Section 508 is amended to eliminate the restriction to act on a transfer of appropriation only by resolution. This amendment will allow a transfer of appropriation by resolution, order or ordinance.
- Section 801 is amended to reference the sections of the Charter pertaining to special elections to fill vacancies on the Town Council and School Board. Section 801 is further amended to correct a reference to another section. Finally, Section 801 is amended to eliminate the restriction to act only by resolution, which will now allow action by resolution, order or ordinance.
- Section 901.2 is amended to restrict petitions on bonds to those that are general obligation bonds. This section is further amended to increase the limit of what expenditures are subject to a petition from \$200,000 to \$500,000. Finally, this section is amended to exclude any expenditure from a petition if it is for the purpose of a declared emergency under section 213.1.
- Section 903 is amended to exempt any expenditure or bond, regardless of the amount, from requiring a referendum, so long as the expenditure is related to the treatment and collection of wastewater or with respect to a declared emergency under Section 213.1. Section 903 is further amended to exempt bonds from going to referendum if they are simply being refinanced.
- Section 905.1 is amended to increase the number of registered voters to be on a petition for the recall of elected officials from 10 to 20%.

## SECOND CHARTER MODIFICATION QUESTION

Shall the Town approve the Charter modification recommended by the Charter Review Commission and summarized below?

### Summary

- Section 903 is amended to raise from \$1,000,000 to \$2,000,000 the threshold amount for single item expenditures and for bonding which must be submitted to referendum (this amendment would apply to Section 903 in its current form or as amended by Question 2.)

September 18, 2018

**Via Regular U.S. Mail**

Karen Farber  
Charter Review Commission  
Town of Falmouth  
271 Falmouth Road  
Falmouth, ME 04105

***RE: Opinion on Proposed Charter Revision***

Dear Karen:

This opinion is being submitted to you pursuant to the provisions of 30-A M.R.S.A. § 2103(5)(D)(4). That statute requires the Charter Review Commission's final report to include a written opinion from an attorney admitted to the bar of Maine that the proposed charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.

I am an attorney admitted to the bar of Maine. After reviewing the proposed Charter revision included in the Commission's final report adopted on September 18, 2018, it is my opinion that it does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.

Sincerely,



Amy K. Tchao

AKT/tzl