Brann & Isaacson

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M E M O R A N D U M

DATE: July 18, 2025
TO: Town Council, Town of Lisbon
FROM: Michael Carey, Town Attorney
SUBJECT: Whether a Proposed Charter Modification Is An Amendment or Revision

The "Citizen Initiative to Change the Budget Process," a proposed charter modification, is attached to this memorandum as Exhibit A. Tonight, the Town Council must determine whether it is a charter amendment or charter revision. Then, a question will be put before the voters in the November 4, 2025, municipal referendum. If the proposed charter modification is a charter amendment it will be on the referendum ballot, and if it is a charter revision the question will be whether to establish a charter commission.

I have been asked to advise the Council on its role in determining whether the petition is an amendment or revision; how that determination is made; whether the Council must follow the opinion of the prior Town Attorney[1]; and what are the timelines by which the Council must act. This memorandum focuses on those procedural questions.

In summary, it is the Council that must determine whether the proposed charter modification is an amendment or a revision, and it must support its decision with findings of fact. The Town Attorney will support the Council by drafting agreed-to findings of fact for adoption in written form later in the meeting. In advance of the meeting, Councilors and members of the public are welcome to provide suggested findings of fact, in writing, to the Town Clerk by electronic mail.

[1] Attorney Kristin Collins, the prior Town Attorney, opined in a July 8, 2025 memorandum that the proposed amendment does not contain any provision prohibited by the general laws, the United States Constitution or the Constitution of Maine, and that the petition requests a charter amendment. Attorney Collins found that the proposed charter modifications are not "inherently in conflict with any existing Charter provision. Moreover, they relate only to one subject matter – budget adoption. For these reasons, I conclude that the petition seeks a charter amendment, and that there is no need to call for a charter commission pursuant to 30-A M.R.S. § 2104(4)." There was no discussion, however, of the breadth or depth of the proposed modifications, which we recommend that the Council consider in making its determination.

I. The Council Must Determine if the Petition is a Revision or an Amendment.

A petitioners' committee may request that the petition form contain specific language about a Council role to determine whether the petition is a revision or an amendment. 30-A M.R.S. §2104(4). After receiving "a petition containing this language, the municipal officers, if they determine with the advice of an attorney that the proposed amendment would constitute a revision of the charter, shall treat the petition as a request for a charter commission and follow the procedures applicable to such a request." *Id.* The petition form for the "Citizen Initiative to Change the Budget Process" did not contain the specific language. In light of that, what is the Council's role?

As discussed in *Fair Elections Portland v. City of Portland*, the Portland City Council considered a citizen-initiated petition that lacked the section 2104(4) language, as here. *See* 2021 ME 32, ¶ 14. Nonetheless, the Law Court concluded that state statute "authorizes municipal officers to review a proposed charter modification to determine whether it constitutes a revision rather than an amendment, even where the petition presenting the proposed modification does not include section 2104(4)'s optional language." *Id.*, ¶ 25. Even though the petitioner's committee did not include the required language on the petition form, the Council has the authority to determine whether the proposed modification is an amendment or revision.

A. The Council Looks at the Proposed Modification's Scope—its Breadth and Depth.

It "is of critical importance that the municipal officers—while exercising gatekeeping authority to implement the inhabitants' home rule power—examine how the specific proposal at issue would, if adopted, interact with the terms of the existing charter and the municipality's operations under the existing charter." *Id.*, ¶ 33. Whether a proposal is a charter amendment or a charter revision requires the evaluation "of its effect on the entire municipal charter" and "its practical effect on existing municipal policies, practices, and operations." *Id.*, ¶ 27. The "critical question is whether the proposed change is significant enough to require a (potentially) years-long inquiry into all aspects of the municipality's government. The distinction between an amendment and a revision, therefore, is essentially one of scope, in terms of both the breadth of what would be affected and the depth of what would be altered." *Id.*, ¶ 32.

In looking at the *breadth* of the proposed change, "a proposed amendment would not, if enacted, materially affect the municipality's implementation, in the course of its operations, of major charter provisions that are not mentioned in the proposed amendment." *Id.* "In terms of *depth*, an amendment would not, if enacted, make a profound and fundamental alteration in the essential character or core operations of municipal government." *Id.*

If the Council finds that the breadth, depth, or both of the "Citizen Initiative to Change the Budget Process" is significant enough to justify a charter commission, the proposed modification is a charter revision. *Id.*

B. Findings of Fact Must Support the Council's Determination.

In *Fair Elections Portland*, the City Council did not make findings of fact, and the Law Court found that the interactions between the proposed charter modification and the existing charter were "not at all obvious," so the Law Court vacated the Superior Court's judgment for Portland and ordered the case remanded to the City Council to adopt findings of fact. *Id.*, ¶ 38.

II. The Town Attorney's Role Is to Provide the Council with Advice.

It is the Council that must determine whether the petition is a charter amendment or revision, as discussed above, after seeking an attorney's advice. Statute does not require the Council to follow the attorney's advice, nor does it limit the number of attorneys from whom the Council may seek counsel.

The facts of *Fair Elections Portland* highlight the Council's primacy in this process. In that case, the Law Court found that a City Attorney's memorandum to Council, without Council findings of fact, did not provide sufficient findings for the City to base its determination. *Id.*, ¶ 36. In that case, the Court found Council debate transcripts were insufficient because the Court can neither "infer that any particular comment represents the decision of the City Council nor deduce the City Council's reasoning based on the comments as a whole." *Id.*, ¶ 37.

Based on the evidence presented to and considered by the Council, Brann & Isaacson can advise whether the proposed modification is an amendment or a revision. It is likely that there is some evidence from which councilors might conclude that moving appropriations authority from the Council to referendum is modification of sufficient depth to constitute a charter commission. Similarly, some evidence may support a determination that the petition affects major charter provisions that are not mentioned in the proposed amendment. The Council should make its determination after considering and weighing all evidence.

III. Timeline.

The Town's timeline if the Council determines that the proposed modification is a charter revision is different from the timeline if it determines it is a charter amendment.

A public hearing on the proposed modification was held at the regular July 15, 2025 Council Meeting. If the Town Council determines that the proposal is a charter amendment, the Council has 7 days after the public hearing to file with the Town "clerk a report containing the final draft of the proposed amendment and a written opinion by an attorney admitted to the bar of this State that the proposed amendment does not contain any provision prohibited by the general laws, the United States Constitution or the Constitution of Maine." 30-A M.R.S. §2104(4). Attorney Collins has issued such a written opinion. The Council must decide, tonight, the final draft of the proposed amendment. Then, the proposed amendment shall be on the ballot for the next regular or special municipal election. *Id.*, (5)(C).

On the other hand, if the Council determines that the proposed modification constitutes a revision of the charter, then the petition for "Citizen Initiative to Change the Budget Process" shall be treated as a request for a charter commission, 30-A M.R.S. §2104(4), and "the question that the municipal officers must submit to the voters is whether to convene a charter commission," *Fair Elections Portland, Inc.*, 2021 ME 32, ¶ 9; 30-A M.R.S. §2104(5).

We recommend that the Council conduct its work tonight, as follows:

1. After deliberation, it should determine whether the proposed charter modification is a charter amendment or revision.
2. The Council should then debate and reach consensus on Council findings of fact to support the determination.
3. If the Council determines that the proposed charter modification is a charter amendment, it also should determine the final draft of the proposed amendment to be summarized for the ballot.
4. The Council should issue one of two orders:
    a. Order 2025-109-B would determine that the proposed modification is a charter amendment, adopt findings of fact, and determine a final draft summary for the ballot.
    b. Order 2025-109-C would determine that the proposed modification is a charter revision, adopt findings of fact, and submit a question for the ballot to establish a Charter Commission.

Municipality of Lisbon, Maine

Petition for **Citizen's Initiative to Change the Budget Process**

Exhibit A

Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below:

Amendment to Charter Article VI - Financial Provisions, Section 6.06 - Council Action on Budget

**Note: All signers must read the proposed legislation on the reverse of this page before signing*

	Signature *(ink only)*	Physical Street Address	Printed Name
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CIRCULATOR'S AFFIDAVIT

Required by Maine State Statute 30-A, §2102: I attest that I personally circulated this form, that each of the _____signatures were affixed in the circulator's presence, that the circulator believes them to be the genuine signatures of the person whose names they purport to be, that each signer has signed no more than one petition, and that each signer had an opportunity to read the proposed changes to the Lisbon Town Charter before signing.

_____ Subscribed and sworn to before me this _____ day of _____, 2025.

(Circulator's Signature)

_____

Notary Public (seal here)

Date Issued: _____ Date Filed: _____ Time Filed: _____AM/PM No. Signatures Valid: _____

Municipality of Lisbon, Maine

Petition for **Citizen's Initiative to Change the Budget Process**

Each of the undersigned voters respectfully requests the municipal officers to provide for the amendment of the municipal charter as set out below:

Amendment to Charter Article VI - Financial Provisions, Section 6.06 - Council Action on Budget

*Note: All signers must read the below proposed legislation before signing:

Reference: - TOWN Of LISBON, ME CHARTER (requires Election to Amend) ARTICLE VIII. - INITIATIVE, REFERENDUM, RECALL AND SPECIAL TOWN MEETING Part 2. Initiative and Referendum

Referendum Short Title: **Citizen Initiative to Change the Budget Process**

Article Requesting Change by Petitioners Committee: **ARTICLE VI, Section 6.04**

Language of proposed initiative ordinance, resolution, or other measure:

ARTICLE VI, Section 6.04
"Charter Article VI – Financial Provisions, Section 6.04 – Council Action on Budget"

REMOVE IN ENTIRETY

~~*(c)*~~
~~*Amendments Before Adoption. After the public hearing, the Town Council may adopt the Manager's budget with or without amendment. It may by amendment add or increase programs or amounts and delete or decrease programs or amounts except expenditures for debt service or otherwise required by law. The Council may adopt the School budget as proposed and may amend it, but such amendments shall be limited to adding to or decreasing the total amount of the budget.*~~

RESTRUCTURE

CURRENTLY
~~*(d)*~~
~~*Adoption.*~~
~~1.~~
~~Town Budget. The final vote on the Town Budget shall be taken on or before the last Tuesday of June. If Council fails to adopt a Budget for the Town by the last Tuesday in June, the Budget as presented by the Town Manager shall become the Budget to be implemented on a month to month basis until such time as a final Budget is approved.~~

PROPOSED
(c)
Adoption.
1.
Municipal Budget. A validation referendum on the Municipal Budget shall be held annually on the second Tuesday of June. If the budget should be defeated at the referendum, the interim spending until the adoption of a new municipal budget shall continue at the same level as the previous budget. A second validation referendum on the Municipal Budget shall be held on the second Tuesday of July. If the Municipal Budget is defeated at referendum a second time, the Town Council shall, after public hearing, adopt the prior fiscal year's Municipal Budget, reduced in totality by 33% for the ensuing fiscal year. There shall be only two referendums permitted hereunder for any one fiscal year's Municipal Budget.