Outlook

Fw: Submission of Findings: Proposed Charter Change July 2nd Workshop

From Glenn Michalowski <GMichalowski@lisbonme.org>
Date Thu 7/17/2025 3:04 PM
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Book time to meet with me

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Sent: Thursday, July 17, 2025 2:59 PM
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Cc: Glenn Michalowski <GMichalowski@lisbonme.org>
Subject: Submission of Findings: Proposed Charter Change July 2nd Workshop

Members of the Council; Town Manager,

I respectfully request that these findings be included in the Town Council workshop agenda packet for July 22nd 2025, for consideration as a finding of fact.

I've been doing a lot of digging into our Town Charter, state laws, and learning from past court decisions that shed light on how these budget changes are to be handled. What I've found raises some very serious questions about whether this should be considered a simple amendment or a much more significant revision to our Charter. This distinction isn't just technical; it has huge implications for Lisbon.

My research suggests this proposed change is a major overhaul of how our town is run financially. It's being presented as a simple "amendment," but it fundamentally shifts how our government operates, especially concerning our budget.

The Maine Municipal Association (MMA) and even past Maine Superior Court decisions have made it clear that proposals "substantially altering the existing budget process" should be treated as a charter revision. The current proposal absolutely fits that description.

For example, a significant case from the Maine Superior Court, *Edward Karytko and Bruce Coyne, et al. v. Town of Kennebunkport, et al.* (from October 16, 2006), found that proposed changes which "**substantially altered the existing budget process**" constituted a **charter revision**, requiring the more involved process.

Right now, our Town Council is ultimately responsible for adopting our town's budget. They review the Town Manager's plan, hold public hearings, and make the tough final decisions. If they can't agree, the Manager's budget temporarily goes into effect, ensuring our services don't stop.

This new proposal completely flips that on its head. It takes the power to approve the budget away from our elected Council and gives it directly to us, the voters, through referendums. And here's the most

concerning part: if we vote down the budget twice, there's a drastic, automatic 33% cut to our town's entire budget.

This isn't a minor tweak. It's a fundamental shift in how our town is governed. It severely weakens the role of our Town Council, whom we elect to make informed decisions on behalf of all of Lisbon. Their job is to carefully consider all aspects of the budget, listen to public input, and then make difficult choices for everyone. If their work can be completely undone, and then punished with such a massive, automatic cut, it seriously undermines their entire purpose.

Maine law makes a very clear distinction between small "amendments" and big "revisions" to a town charter. A revision fundamentally changes how the government works. Maine courts have consistently ruled that changes to the budget process, even less severe than what's proposed for Lisbon, are considered "revisions" because they significantly alter how the town operates financially. This proposal goes even further with that automatic 33% cut.

Maine state law (specifically Section 2104(4) of Title 30-A of the Maine Revised Statutes) even has a rule for this: if the town's lawyer advises that a proposed "amendment" is truly a "revision," then it *must* go through a proper, more involved revision process. The Maine Supreme Judicial Court (in the *Fair Elections Portland v. City of Portland* case from 2021) has confirmed this distinction.

Given the strong precedent from the *Karytko* case, it's difficult to understand how this proposal could be classified as a mere amendment. The sheer scale and potential impact of this change make me feel that, as a town, we should seek a second or even a third opinion on whether this constitutes a revision or an amendment.

Regardless of whether it's called a revision or an amendment, this proposed change also appears legally insufficient due to inherent contradictions and serious legal problems. Its content directly conflicts with existing legal requirements, threatens our essential town services, creates ambiguity, and introduces numerous contradictions within our own Charter.

Here are specific contradictions and legal vulnerabilities I've identified:

- **Conflict with Section 6.03 "Budgets":**
    - Currently, 6.03 outlines that the Town Manager and School Committee "shall prepare and submit" budgets as financial plans. The proposed amendment drastically changes the adoption mechanism. While it doesn't directly contradict the preparation, the idea of a 33% automatic reduction could render the initial "financial plan" of 6.03(a) utterly meaningless. How can the Town Manager or School Committee create a realistic financial plan if it could be arbitrarily slashed by one-third due to voter rejections?
    - The "format" requirements of 6.03(b) (e.g., showing estimated income, proposed property tax levy, detailed expenditures) become problematic. If the budget is ultimately determined by a referendum that could result in a 33% cut, the figures presented in the initial budget (per 6.03(b)) might bear little resemblance to the adopted budget, potentially misleading the public.
- **Impact on Section 6.04(a) "Notice and Hearing":**
    - While the proposal mentions a public hearing before the Council adopts the prior fiscal year's budget reduced by 33% after two defeats, it doesn't explicitly modify the initial public hearing process for the Town Manager's budget. However, if the public understands that their vote, not the Council's deliberations, is the ultimate decider, and especially with the 33% penalty looming, the nature and effectiveness of those initial public hearings could change dramatically, becoming more about influencing referendum voters than informing Council decisions.
- **Absence of "Emergency" or "Contingency" Appropriations (Post-33% Cut):**

- Sections 6.06 ("Supplemental and Emergency Appropriations") and 6.07 ("Reduction of Appropriations") provide mechanisms for adjusting the budget *after* adoption. However, a pre-ordained 33% cut is not an "emergency appropriation" or a "reduction of appropriation" in the conventional sense; it's an automatic, potentially catastrophic, preemptive defunding.

- If the town operates under a 33% reduced budget due to a double referendum defeat, any subsequent "emergency" would be amplified. The town would have vastly fewer resources. This could create a legal and operational crisis if, for example, a natural disaster, a major infrastructure failure, or an unforeseen public health emergency occurred while operating under such a severely constrained budget. How would the town legally appropriate funds for such an emergency when the entire budget has been so drastically cut? It could necessitate entirely new, rapid-fire ordinances, potentially outside the normal process, creating further legal ambiguity.

- **Section 6.08 "Lapse of Appropriations":**

  - This section states appropriations lapse at the close of the fiscal year if unexpended, "except that an appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned." A 33% reduction across the board could force the abandonment of previously approved and funded capital projects, creating a conflict with this provision and potentially leading to wasted prior expenditures or contractual disputes.

Contradictions with Other Articles of the Charter:

- **Article II "Town Council":**

  - **Diminished Authority of the Council:** Section 2.09 ("Powers and Duties") outlines the Council's broad authority to "exercise all powers conferred on the Town by law," "enact, amend or repeal ordinances, orders, and resolves," and "raise and appropriate monies." The proposed amendment strips the Council of its ultimate authority to "raise and appropriate monies" for the municipal budget. Their role would become more akin to a "recommending body" whose recommendation can be rejected twice with severe penalties. This could lead to a demoralized Council or difficulties in attracting qualified candidates for office.

  - **Contradiction with "Administrative Code" (Section 2.12.1):** The Council is empowered to "Adopt or amend an Administrative Code, or establish, alter or abolish any department, office or agency." How can the Council effectively "establish, alter or abolish" departments if their primary tool for doing so – the budget – is subject to external control and automatic drastic cuts? A 33% cut would inevitably force departmental restructuring, potentially overriding the Council's deliberate planning.

  - **Relationship with Ordinances (Section 2.12):** Many ordinances require funding for their enforcement or implementation. If the budget is severely cut, the town may be unable to enforce existing ordinances, leading to a breakdown in public services or legal challenges from citizens expecting services the town can no longer provide.

- **Article III "Town Manager":**

  - **Feasibility of Duties:** Section 3.03 ("Powers and Duties") grants the Town Manager the responsibility to "execute the laws and ordinances of the Town" and "administer the affairs of the Town." How can the Town Manager "administer the affairs" or "execute the laws" if the budget, the lifeblood of administration, can be so drastically and automatically reduced? This sets the Town Manager up for failure.

- **Budget Preparation vs. Reality:** The Manager's duty to "prepare and submit the annual budget" becomes a very tenuous exercise if it's almost guaranteed to be altered and faces a high risk of a punitive 33% cut. This could lead to managers proposing minimalist budgets to try to "pass" the referendum, rather than budgets based on actual town needs, creating a self-fulfilling prophecy of underfunding.

- **Article IV "School Department":**
  - **Ambiguity and Potential Conflict for School Budget:** The proposed language specifically states "Municipal Budget" for the referendums. However, in Lisbon's current charter (and generally in Maine), the Town's contribution to the School Budget is part of the overall "Town Budget" or "Municipal Budget" for tax purposes. Section 6.04(c) currently differentiates, allowing the Council to amend the total amount of the School budget.
    - **CRITICAL AMBIGUITY:** Does "Municipal Budget" in the new 6.04(c) include the town's portion of the school budget? If so, then the school budget, currently approved through a separate validation referendum (as per Section 6.05), could be double-jeopardized. If the overall "Municipal Budget" (including schools) fails twice, would the 33% reduction apply to the entire municipal budget, thereby cutting the town's contribution to the school budget by 33% even if the school-specific referendum passed? This would create an enormous, legally contentious conflict between the proposed new 6.04(c) and the existing 6.05.
    - If the intent is *only* the general government budget, the wording needs to be extremely precise to avoid inadvertently subjecting the school budget to a 33% cut if the town's portion is considered part of the "municipal budget" in practice. This is a very likely serious issue.

- **Capital Improvement Plan (Section 6.09):**
  - The requirement for a five-year capital program becomes nearly impossible to maintain under the threat of a 33% budget reduction. How can the town plan for long-term infrastructure, equipment, and facility needs if its funding for those plans can be so drastically cut annually? This could lead to deferred maintenance, deteriorating infrastructure, and a reactive, rather than proactive, approach to capital planning.

- **Debt Service and Legal Requirements (General):**
  - The current 6.04(c) explicitly states the Council cannot amend "debt service or legally required expenditures." The proposed amendment for the 33% reduction simply states, "reduced in totality by 33%." This is a **massive potential legal conflict.** Can a citizen-initiated referendum, even one codified in the charter, legally compel the town to default on its debt obligations or violate state/federal mandates by cutting legally required expenditures by 33%? This is highly unlikely and could lead to lawsuits, bond rating downgrades, and state intervention. Maine law typically protects essential services and financial commitments from arbitrary cuts.

Operational and practical issues leading to further contradictions):

- **Employee Contracts and Compensation:** A 33% budget cut would inevitably impact existing collective bargaining agreements or individual employee contracts. It would likely necessitate layoffs, renegotiations, or breaches of contract, leading to significant legal and financial consequences for the town. This would contradict any provisions related to employee rights or fair labor practices that might exist in ordinances or town policies.

- **Essential Services:** A 33% reduction would inevitably force cuts to essential services like public safety (police, fire, EMS), public works (road maintenance, sanitation), and general

administration. This could directly contradict the implied purpose of the town charter and ordinances, which is to provide for the "health, safety, and welfare" of the residents.

- **Revenue Generation:** If revenues are stagnant or declining, a 33% reduction based on the prior year's budget could be even more devastating. The charter and ordinances outline various revenue streams (e.g., property taxes, fees, licenses). Drastic budget cuts could lead to increased fees or taxes in subsequent years to try and recover, creating a cycle of instability and citizen frustration.

- **State Mandates:** Maine municipalities are often subject to state mandates for services (e.g., education, general assistance, environmental regulations). A 33% budget cut could make it impossible for Lisbon to meet these mandates, potentially leading to fines, loss of state aid, or other penalties. This would put the town in direct conflict with state law.

This entire proposal represents nothing but a **recipe for chaos and legal challenges, ultimately costing taxpayers more.** The proposed charter amendment, particularly the 33% automatic reduction, appears to be a blunt instrument designed to force fiscal austerity without regard for the intricate legal and operational framework of a municipal government. It introduces:

1. Direct contradictions with existing provisions regarding the Council's authority, budget preparation, and the handling of emergency funds.

2. Severe ambiguity regarding the treatment of the school budget, which could lead to significant legal disputes.

3. Potential for violating state law regarding debt service, legally required expenditures, and state mandates.

4. Operational paralysis and potential financial ruin for the town, making it incredibly difficult to deliver essential services, maintain infrastructure, or plan for the future.

In simple terms, while the proposed changes to Lisbon's budget process are presented as an "amendment," they are so significant—shifting power away from our elected Council and introducing an automatic 33% budget cut—that they likely qualify as a "revision" under Maine law. This distinction is critical because revisions require a more thorough process involving a citizen-led Charter Commission and ignoring it could create serious contradictions within our Town Charter and lead to significant legal problems for Lisbon, potentially invalidating the change even if approved by voters.

Respectfully,

Dean Willey - Lisbon Falls