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## **SPECIAL MEETING BOARD OF MAYOR AND ALDERMEN**

**September 28, 2021 at 5:30 PM**

Mayor and All Aldermen

### **AGENDA**

The Mayor calls the meeting to order.

The Mayor calls for the Pledge of Allegiance.

A moment of silence is observed.

The Clerk calls the roll.

**1. Proposed Charter amendment:**

**Shall the City of Manchester approve amendment to the City of Manchester Charter summarized below:**

1. The Charter is amended throughout so that the "School Committee" is referred to as the "School Board," a "School Committeeman" is referred to as a "School Board Member," consistent with the State law.

2. The School Board shall elect from among its members a chairman to serve for a term of two years. In the event of a vacancy, the School Board shall appoint a replacement to serve for the remainder of the term.

3. The School Board shall have fiscal autonomy and be responsible for overseeing the administration of the School District's budget. It shall have the authority to borrow money on behalf of the School District. The School Board shall be subject to the existing limitation on budget increase but shall have the authority to override that limitation with two-thirds super-majority of its membership.

4. Various provisions of the Charter are amended to provide that the School Board shall comply with the laws of the State of New Hampshire for the adoption and accounting of its annual budget and its capital budget and for the issuance of a debt instrument; to authorize the School Board to appoint an

independent auditor, a clerk, and a treasurer.

5. Effective Date: Upon Passage

If you favor this proposal, vote YES; if you do not favor it, vote NO.

**If the Board so desires, a motion would be in order that the above charter amendment question be ordered to the November 2, 2021 Municipal General Election ballot.**

The Mayor advises if there is no further business, a motion is in order to adjourn.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT

City of Manchester

RECEIVED

v.

SEP 21 2021

The State of New Hampshire

City Clerk's Office

Docket No. 216-2021-CV-00592

**ORDER**

The City of Manchester has brought this action seeking a declaratory judgment that its proposed changes to the City Charter constitute amendments pursuant to RSA 49-B:4-f. The State objects and moves to dismiss, arguing that the proposed changes instead constitute revisions, requiring the City to follow the procedure set forth in RSA 40-B:4-e. The Court held a hearing on September 20, 2021. For the reasons that follow, the Court finds in favor of the City. Accordingly, the State's motion to dismiss is DENIED.

The current charter of the City of Manchester gives the Board of Mayor and Aldermen significant authority over the Manchester School District. In particular, the current charter makes the mayor the chairperson of the Manchester School Committee and gives the Board of Mayor and Aldermen control of the School District's budget. On July 20, 2021, pursuant to RSA 49-B:5, the Board of Mayor and Aldermen voted to propose amendments to the City Charter that would effectively remove the School District from the Board of Mayor and Aldermen's control and replace the School

Committee with an independent School Board. The City has summarized the proposed changes as follows:

1. The Charter is amended throughout so that the "School Committee" is referred to as the "School Board," a "School Committeeman" is referred to as a "School Board Member," consistent with the State law.
2. The School Board shall elect from among its members a chairman to serve for a term of two years. In the event of a vacancy, the School Board shall appoint a replacement to serve for the remainder of the term.
3. The School Board shall have fiscal autonomy and be responsible for overseeing the administration of the School District's budget. It shall have the authority to borrow money on behalf of the School District. The School Board shall be subject to the existing limitation on budget increase but shall have the authority to override that limitation with two-thirds super-majority of its membership.
4. Various provisions of the Charter are amended to provide that the School Board shall comply with the laws of the State of New Hampshire for the adoption and accounting of its annual budget and its capital budget and for the issuance of a debt instrument; to authorize the School Board to appoint an independent auditor, a clerk, and a treasurer.

(Compl., Ex. B.)

On July 22, 2021, the City provided the proposed change to the Secretary of State, Attorney General, and Commissioner of the Department of Revenue Administration for review and approval pursuant to RSA 49-B:4-a and RSA 49-B:5. (See *id.*, Exs. B-D.) The Attorney General's office acknowledged receipt of the proposal the same day. (*Id.*, Ex. E.) On August 20, 2021, the Attorney General's office notified that City that it had determined that the proposed changes to the city charter constituted a "revision" pursuant to RSA 49-B:4-d, which required the City to follow the procedure set forth in RSA 49-B:4-e. (*Id.*, Ex. F.) In short, a revision of a city charter would require the voters to first elect to create a charter commission, which would generate a

proposed change to the charter with public input, followed by a vote on the proposal in the next election. As a result of its determination, the Attorney General's office stated that "the reviewing agencies are unable to engage in their review process under Chapter 49-B." (*Id.*)

On September 3, 2021, the Attorney General sent a follow-up letter, reaffirming its findings and expanding on the reasons it believed the proposed change constituted a revision instead of an amendment. (*Id.*, Ex. G.) Shortly thereafter, the City filed the instant petition.

The question presently before the Court is whether the proposed change to the City Charter constitutes a revision or an amendment. Prior to 2014, "amendment" and "revision" were defined in the statute as follows:

"Amendment" means the enactment or repeal of a single section or subsection of a charter pertaining to any one subject matter, and any related section the meaning or operation of which is changed as a result of the enactment or repeal.

....

"Revision" means multiple changes in the basic form of government proposed by several enactments or repeals.

RSA 49-B:2, IV (2012). In 2014, the legislature passed House Bill 422, which generally amended RSA chapter 49-B. Under the current law, "revision" is defined as:

[A]ny change to an existing charter that results in a change in the municipality's form of government to any of the following forms:

- I. Traditional town meeting.
- II. Official ballot town meeting.
- III. Town council.
- IV. Official ballot town council.
- V. Budgetary town meeting.
- VI. Representative town meeting.
- VII. City under mayor-alderman plan.
- VIII. City under council-manager plan.
- IX. Any other form hereafter expressly authorized by statute.

RSA 49-B:4-d. An “amendment” to a municipal charter is now defined as “any change to an existing charter that does not constitute a revision . . . .” RSA 49-B:4-f.

Because the City’s current charter predates the 2014 amendment and provides the Board of Mayor and Aldermen significant authority over the School District, the State argues that Manchester currently has a grandfathered hybrid form of government as opposed to a pure mayor-alderman plan. The State maintains that removing the School District from the Board of Mayor and Alderman’s control would result in the City shifting to a pure mayor-aldermen plan, constituting a revision under RSA 49-B:4-d. In contrast, the City argues that it currently has a mayor-aldermen plan and will continue to do so after the school district becomes independent. The Court agrees with the City.

Pursuant to RSA 49-C:8, enacted in 1991, municipal governments that have chosen to operate under a city charter must operate under either a mayor-aldermen plan or council-manager plan. The City’s current charter was adopted in 1994, and the City has had a mayor-aldermen form of government since 1864. The City’s form of government was recognized by the New Hampshire Supreme Court in *City of Manchester Sch. Dist. v. City of Manchester*, 150 N.H. 664 (2004). In that case, the City merged the school district with the municipal corporation, making the school district a city department. *Id.* at 665. In discussing the nature of Manchester’s government, the Court found:

Here, the municipal charter denominates Manchester as a city. Therefore, the charter must adhere to the framework set forth in RSA chapter 49-C. RSA chapter 49-C permits a city to select either the mayor-board of aldermen plan or the city council-manager plan as a form of government. Manchester has opted for the mayor-board of aldermen form of government.

*Id.* at 668 (citations omitted); see also *City of Manchester v. Secretary of State*, 161 N.H. 127, 132 (2010) (“We take judicial notice that Manchester’s charter denominates it as a city and that the City has chosen the mayor-board of aldermen form of government as permitted under RSA chapter 49-C.”).

Significantly, finding that “RSA chapter 49-B authorizes municipalities to amend their actual forms of government,” the supreme court held that “when the city amended its charter to make the school district into a city department, *it did not amend its actual form of government* and, therefore, it acted outside of the scope of authority granted to it by RSA chapter 49-B.” *City of Manchester Sch. Dist.*, 150 N.H. at 671 (emphasis added). Therefore, the Court finds that the City currently has a mayor-board of aldermen form of government, and that removing the School District from its control will not result in a change to that form of government.

The State emphasizes the significance of the proposed change, highlighting the fact that the school district accounts for 53% of the City’s entire budget. The State argues that the 2014 amendment to RSA chapter 49-B shifted the amendment/revision analysis from a question of how many changes were being made to a question of whether the content of the change represents a significant change to the form of government. However, the plain language of RSA 49-B:4-d makes no mention of considering the significance of any change; such an analysis is more in line with the pre-amendment definitions, which the legislature has clearly moved away from. In determining whether a change is a “revision,” the current statute only asks whether a change to an existing charter results in a shift from one form of government to another on the enumerated list.

Even assuming that the State's reading of RSA chapter 49-B has some merit, and thus creates an ambiguity in the statute, the legislative history of House Bill 422 provides support for the City's interpretation. Chris Muns, co-sponsor of the bill, testified that "[w]hat the bill does do is clarify the definition of a charter adoption, a charter revision and a charter amendment and what the petitioning and approval requirements for each should be." *Relative to Adoption, Revision, and Amendment of Municipal Charters*, HB 422: April 16, 2014 Hearing Before the Senate Public and Municipal Affairs Committee, Prepared Remarks of Chris Muns. Representative Muns stated that "[a] 'revision' is a change to an existing charter that results in a change in the municipality's form of government; from say a representative town meeting to a town council form of government, or vice versa." *Id.* On the other hand, "[a]n 'amendment' is any change to an existing charter that does not constitute a revision, i.e. where the town is *not changing its form of government*." *Id.* (emphasis added).

In a letter to the Senate Public and Municipal Affairs Committee, Cordell Johnston, Government Affairs Counsel for the New Hampshire Municipal Association, wrote in strong support of HB 422. Summarizing the change HB 422 would make to RSA chapter 49-B, Mr. Johnston wrote:

Some towns have had trouble identifying the difference between an "amendment" and a "revision." The existing statute suggests that if there are a number of amendments, they eventually rise to the level of a revision; but this is far from clear. This ambiguity is a problem, since there are completely different processes for an amendment and a revision. HB 422 solves this problem by making it clear that a revision means a change to the municipality's form of government, while anything less is just an amendment, or multiple amendments.

*Relative to Adoption, Revision, and Amendment of Municipal Charters*, HB 422: April 15, 2014 Letter from Mr. Johnston to Senator David Boutin, at 3. In addition, in

summarizing HB 422, Mr. Johnston stated that the revision process “is used to change from one charter form of government to another.” *Relative to Adoption, Revision, and Amendment of Municipal Charters*, HB 422: Summary of HB 422 by Cordell Johnston<sup>1</sup> at 1. A review of this legislative history persuades the Court that the legislature’s purpose in amending the statute was to reserve the revision procedure solely for instances in which a municipality is changing from one form of government to another, with all other changes to a charter being amendments, regardless of their scope. For cities such as Manchester, a revision would therefore be required only in a change from a mayor-aldermen plan to a council-manager plan, or vice versa. See RSA 49-B:4-d.

Based on the foregoing, the Court finds that the proposed change to the City Charter, while substantial, does not result in a change in the City’s form of government. Therefore, the proposed change constitutes an amendment, not a revision. As a result, the Court now turns to the City’s requested relief. The City represented at the hearing that it has a firm deadline of September 22 to include the proposed charter amendment on the November ballot. As noted above, the City submitted the proposed amendment to the relevant state agencies on July 22. (See Compl. Exs. B-D.) According to RSA 49-B:4-a, I(d):

Within 45 days after the receipt of the report the secretary of state, attorney general, and commissioner of the department of revenue administration shall review the proposed charter, charter revision, or charter amendment to insure that it is consistent with the general laws of this state, and shall give notice to the municipal clerk approving or disapproving the proposed charter.

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<sup>1</sup> The Court presumes that Mr. Johnston is the author of this document as his name is handwritten at the top of the first page.

If the secretary of state, attorney general, or the commissioner of the department of revenue administration do not approve, they must specify their objections in writing. RSA 49-B:4-a, II. “Failure to specify objections to a proposed charter within 45 days shall constitute approval by the secretary of state, attorney general, or the commissioner of the department of revenue administration.” *Id.*

The City argues that the enumerated state agencies have failed to specify their objections to the proposed amendment and, as a result, they must be deemed to have approved. The Court agrees. In its initial response on August 20, 2021, the Attorney General’s office stated: “After careful review, we conclude that the proposed amendments were not properly presented for consideration by the reviewing agencies. . . . *As a result, the reviewing agencies are unable to engage in their review process under Chapter 49-B.*” (Compl. Ex. F at 1 (emphasis added).) In a follow-up letter dated September 3, 2021, the Attorney General’s office “affirm[ed] [its] August 20 determination.” (*Id.*, Ex. G at 1.) While the Attorney General’s office outlined the reasons why it believed the proposed change constituted a revision instead of an amendment, it did not specify any objections to the substance of the proposed change.

As a result of mistakenly determining that the proposed amendment to the City Charter constitutes a revision, the state agencies have failed to disapprove of said amendment in the time allotted by statute. Accordingly, the state agencies have approved by default. See RSA 49-B:4-a, II. No additional review is warranted or authorized pursuant to the statute. As a result, the City may proceed by including the proposed amendment on the ballot for the November 2021 election.

September 21, 2021  
Date

  
\_\_\_\_\_  
Judge David A. Anderson

Clerk's Notice of Decision  
Document Sent to Parties  
on 09/21/2021

## **SUMMARY OF PROPOSED CHARTER AMENDMENTS**

**Shall the City of Manchester approve amendment to the City of Manchester Charter summarized below:**

1. The Charter is amended throughout so that the “School Committee” is referred to as the “School Board,” a “School Committeeman” is referred to as a “School Board Member,” consistent with the State law.
2. The School Board shall elect from among its members a chairman to serve for a term of two years. In the event of a vacancy, the School Board shall appoint a replacement to serve for the remainder of the term.
3. The School Board shall have fiscal autonomy and be responsible for overseeing the administration of the School District’s budget. It shall have the authority to borrow money on behalf of the School District. The School Board shall be subject to the existing limitation on budget increase but shall have the authority to override that limitation with two-thirds super-majority of its membership.
4. Various provisions of the Charter are amended to provide that the School Board shall comply with the laws of the State of New Hampshire for the adoption and accounting of its annual budget and its capital budget and for the issuance of a debt instrument; to authorize the School Board to appoint an independent auditor, a clerk, and a treasurer.
5. Effective Date: Upon Passage

**If you favor this proposal, vote YES; if you do not favor it, vote NO.**

A complete copy of the Text of these proposed Amendments and of a summary of these amendments is available at the City Clerk’s Office, on the City of Manchester website at [www.manchesternh.gov](http://www.manchesternh.gov) and has been posted at: City Hall at One City Hall Plaza and the Manchester City Library at 405 Pine Street.

The text of the proposed charter amendments appear below:

**Amend Article II, Section 2.05 by striking subsection (c) in its entirety such that the section now reads as follows:**

**SECTION 2.05 VACANCIES.**

(a) Should a vacancy occur in the office of mayor, the aldermen shall elect a mayor, who shall serve until the next regularly scheduled election for the office of mayor, and until his successor is duly elected and qualified.

(b) Should a vacancy occur in the office of alderman, the remaining members shall call a special election in the ward in which the vacancy shall have occurred, to fill the vacancy.

**Amend Article II, Section 2.10(a) by striking the phrase “and school committee” such that it reads as follows:**

**SECTION 2.10 APPOINTMENTS.**

(a) The mayor shall appoint the members of the standing committees of the board of aldermen and shall choose the chair for each committee.

**Amend Article IV by striking the same in its entirety and replacing it as follows:**

**ARTICLE IV. SCHOOLS AND SCHOOL BOARD**

**SECTION 4.01 SCHOOL DISTRICT.** The city of Manchester shall continue to constitute a single school district (“District”) and its boundaries shall be coterminous with the boundaries of the city. The District shall have all the rights, immunities, powers and privileges, and shall be subject to all the duties and liabilities as are established by general law for the government of school districts and municipal corporations. All existing property of the District shall remain vested in it for such time as the property is used for school purposes. All general laws relative to the government of the school district and the powers of school boards is hereby continued in force and shall apply to the District.

**SECTION 4.02 SCHOOL BOARD AS GOVERNING BODY.** All the powers of the District shall be vested in the School Board. Except as herein otherwise provided, the School Board shall have and exercise all the powers and discharge all the duties conferred on or imposed upon school boards, school districts and school committees by general laws now in force or hereafter enacted. The board shall develop and maintain accounting control over the finances of the District and make and file required financial reports. The School Board shall be comprised of fourteen (14) members, one each from the twelve wards of the city and two from the city at-large. No person shall be a candidate for election as member of the School Board who is not a duly-qualified voter in the District. Whenever a board member ceases to be a resident of the District, the board shall

declare his/her seat vacant and shall fill the vacancy as provided in Article 4.05. The School Board shall sit and act together as one body. The board shall, at its first regular meeting after the first Tuesday in January next following the election, choose one of its members as chair for a term of two years. The school superintendent, or an assistant superintendent, if there is no superintendent, shall preside over the election of a chair. The chair shall then preside over the election of a vice-chair who shall serve for a term of two years. The school board chair shall appoint the members of the standing committees of the School Board and shall choose the chair for each committee. All meetings, as defined by RSA Chapter 91-A, as it may be amended from time to time, of the School Board shall be public, except for such meetings as are permitted by law to be held in nonpublic session in accord with the provisions of RSA Chapter 91-A. Regular meetings shall be held on such schedule as is deemed appropriate by the board, provided that the board shall meet at least monthly, except during the month of July. Special meetings shall be held on call of the chair or on written request of at least five members of the board. The board shall establish its own rules, and a majority shall constitute a quorum for the transaction of its business.

**SECTION 4.03 DISTRICT OFFICERS AND BONDING.** The school board shall appoint by majority vote a District Treasurer who shall not be: a member of the school board; an elected city official; or an employee of the District. The District Treasurer shall serve at the pleasure of the board and shall be paid such stipend as the board deems appropriate. The board shall maintain fiduciary bonding for the treasurer and such other District employees as are responsible for District funds. The treasurer shall review and verify all claims against the District before paying the same. The treasurer may be removed by three fifths (3/5ths) vote of the board. The school board shall appoint by majority vote a District Clerk who shall not be a member of the school board or an elected city official. The District clerk shall serve at the pleasure of the board and shall be paid such stipend as the board deems appropriate. The District clerk may be removed by three fifths (3/5ths) vote of the board. The District clerk shall serve as secretary of the board and shall be responsible for taking, recording, and keeping the minutes and records of all board meetings. The city clerk, and not the District clerk, shall continue to preside over all elections, including the election of school board members. The school board may also appoint a deputy treasurer and deputy clerk to serve in the event the treasurer or clerk are absent or unavailable in the same manner, and on the same terms as set forth above, except that any stipend shall be in keeping with the limited role and function of a deputy appointee. Any District officer or employee may be required by the board to give a bond for the faithful performance of his duties, and all officers or employees of the District receiving or disbursing District funds or otherwise required by law to be bonded shall be so bonded. All official bonds shall be corporate surety bonds and the premiums shall be paid by the District. The bonds shall be filed with the superintendent of the District or such other administrator as is designated by the board.

**SECTION 4.04 SUPERINTENDENT OF SCHOOLS.** The school board shall nominate a candidate for superintendent of schools for election in accordance with state law. The superintendent shall have such authority as is vested in a superintendent of schools by law, regulation and school board policy, and shall be responsible for the executive oversight of all superintendent services required in a single district school administrative unit.

**SECTION 4.05 VACANCIES.**

Should a vacancy occur in the office of school board member, the school board shall fill such vacancy in accord with NH RSA 671:33(II)(a) for the unexpired term.

**Amend Article V, Section 5.01 by striking the phrase “school committee members” and replacing it with the phrase “school board members” such that the section reads as follows:**

**SECTION 5.01 NON-PARTISAN BALLOT SYSTEM.**

The mayor, aldermen, school board members, ward clerks, selectmen and moderators shall be elected by non-partisan ballot.

**Amend Article V, Section 5.04 by striking the phrase “school committee” and replacing it with the phrase “school board” such that the section reads as follows:**

**SECTION 5.04 FILING FEE.**

“Filing fee” shall mean the fee paid to the city clerk for the use of the city by each candidate who submits a declaration of candidacy. The amount of the fee for each office shall be as follows: mayor, \$100; aldermen, \$50; school board, \$25; and all other offices, no fee.

**Amend Article V, Section 5.06 by striking the phrase “school committee” and replacing it with the phrase “school board” such that the section reads as follows:**

**SECTION 5.06 NOMINATING PETITIONS.**

“Nominating petitions” shall mean petitions filed with the city clerk by each candidate who submits a declaration of candidacy, and who chooses not to pay the filing fee. The number of petitions for each office shall be as follows: mayor, 200; aldermen, 100; school board, 50; and other offices none.

**Amend Article V, Section 5.07 by striking references to the phrase “school committee” and replacing them with the phrase “school board” such that the section reads as follows:**

**SECTION 5.07 PRIMARY SYSTEM.**

(a) In the event, two candidates or fewer, or in the case of at-large aldermanic and school board elections four candidates or fewer, file for an elected office, the primary election for said office will be declared unnecessary by the city clerk, who shall then declare the candidates nominated and place them upon the municipal general election ballot.

(b) In each primary election, the two candidates, or four candidates in the case of an at-large aldermanic and school board elections, receiving the highest number of votes shall be selected from those running for said office and shall be placed on the general election ballot.

**Amend Article V, Section 5.09 by striking the phrase “school committeemen” in subsection (a) and replacing with the phrase “school board members” and by striking the phrase “member of the school committee” in subsection (b) and replacing it with the phrase “member of the school board” such that the section reads as follows:**

**SECTION 5.09 CITY AND WARD OFFICERS.**

At every municipal general election, the following officers shall be elected:

(a) The mayor, the two aldermen at-large and the two school board members at-large by the voters of the city; and

(b) One alderman, one member of the school board, one moderator, one ward clerk and three selectmen by the voters in each ward.

**Amend Article V, Section 5.10(b) by striking the subsection in its entirety and replacing it such that the section reads as follows:**

**SECTION 5.10 TERMS OF OFFICE AND VACANCIES.**

(b) Should such a vacancy occur in the office of school board member, the school board shall fill such vacancy in accord with Section 4.05.

**Amend Article V, Section 5.29(a), (b) by striking reference to the phrase “school committee” and replacing it with the phrase “school board” such that the subsections read as follows:**

Definitions.

(a) “Candidate” shall mean any person publicly declared as such and for whom votes are sought in an election for the offices of mayor, alderman or school board.

(b) “Incumbent Official” shall mean an incumbent mayor, aldermen or school board member.

**Amend Article VI, Section 6.01 by adding the phrase “and school district” such that the section reads as follows:**

**SECTION 6.01 FISCAL YEAR.**

The fiscal years of the city and the school district shall begin on the first day of July and end on the last day of June.

**Amend Article VI, Section 6.02 by adding the word “city” before “departmental” such that the section reads as follows:**

**SECTION 6.02 BUDGET REVIEW AND RECOMMENDATIONS.**

(a) The mayor and such other officials as the mayor shall select, shall review all city departmental budgets to submit the budget in form set forth in Section 6.03.

**Amend Article VI, Section 6.06 by striking the same in its entirety and replacing the section such that it reads as follows:**

**SECTION 6.06 SCHOOL DISTRICT BUDGET.**

The school board shall prepare in a timely fashion an annual budget for the District’s expenditures and revenue for the ensuing fiscal year, itemized in such detail as may be required by the State Board of Education and Department of Revenue Administration.

**Amend Article VI, Section 6.07 by striking the same in its entirety and replacing the section such that it reads as follows:**

**SECTION 6.07 SCHOOL BOARD BUDGET HEARING, ADOPTION AND APPROPRIATION.**

The school board shall conduct at least one public hearing on its proposed budget. The school board shall publish a copy of the proposed budget, a notice stating the times and place where copies of the budget are available for inspection by the public, and the time and place for a public hearing on the school board’s budget. Public announcement of the time and place shall be duly noticed and published not less than 10 days prior to such hearing. The public hearing shall be held at some convenient place in the District prior to the making of the budget appropriation. The school board may continue the date of the public hearing, may recess the hearing to a date certain, and may also conduct an

additional budget hearing if it deems such to be warranted, provided that it provides notice of any continuance, and additional budget hearing. The budget adoption and appropriation shall be made by majority vote of the school board at a duly noticed public meeting after the public hearing and not later than sixty days prior to the beginning of the fiscal year for which it shall apply. No additional appropriation shall be made for any purpose not included in the annual budget as adopted, unless approved by a majority of the board after a public hearing held to discuss such additional appropriation. After the annual budget has been adopted by the school board, it shall be a charge upon the residents and ratable estates of the District in the same manner as a budget adopted by the city of Manchester. The chair of the board, or some officer designated by the board, shall from time to time as the occasion requires draw upon the treasurer of the city of Manchester for funds necessary for the support of the District. After the school district's annual budget has been adopted, no money shall be drawn from the District treasury, nor any obligation for the expenditure of money or property of the District be incurred, except pursuant to and in accordance with state law, including RSA 32:11 and RSA 198:20-b. The school board shall adopt an investment policy in accordance with RSA 197:23-a.

**Amend Article VI, Section 6.08 by striking the same in its entirety and replacing the section such that the section reads as follows:**

**SECTION 6.08 ADMINISTRATION OF THE BUDGET.**

The board of mayor and aldermen may provide by ordinance any additional procedures for administering of the city budget. The school board shall administer, expend and account for the school budget and shall have the exclusive authority to transfer funds among line items in the school budget.

**Amend Article VI, Section 6.10 by the phrase “and the school district” to the first sentence and adding a second sentence such that the section reads as follows:**

**SECTION 6.10 DEBT LIMIT AND BORROWING FOR SCHOOL DISTRICT PURPOSES.**

The debt limit for the city and school district shall be as prescribed by state law as amended from time to time. Nothing herein shall alter or diminish the existing obligations of the city and school district with regard to bonds, notes, instruments and other borrowing which predate the effective date of this amended charter.

**Amend Article VI, Section 6.11 by adding language regarding the school district business administrator such that the section reads as follows:**

**SECTION 6.11 CITY FINANCE OFFICER AND SCHOOL DISTRICT BUSINESS ADMINISTRATOR.**

The city finance officer, in addition to other duties set forth in this charter or by law, shall maintain accounting control over the finances of the city, shall make financial reports at least quarterly, and shall perform such other duties relating to budget management and control as the board of mayor and aldermen by ordinance may require.

The school district business administrator, in addition to other duties set forth by law, shall maintain accounting control over the finances of the school district, shall make financial reports at least quarterly, and shall perform such other duties relating to budget management and control as the school board may require. Subject to the applicable provisions of general law, the school board by resolution approved by at least 2/3 of its members may authorize the borrowing of money for any purpose within the scope of the powers vested in the District and may issue bonds of the District or other evidences of indebtedness therefore, and may pledge the full faith, credit and resources of the District for the payment of the obligations created thereby. Borrowing for a term exceeding one year shall be authorized by the board only after a duly noticed public hearing. The board shall have the authority, when issuing bonds or other obligations of the District, to negotiate with the city of Manchester for the use of its facilities and credit.

**Amend Article VI, Section 6.12 by adding new subsection (e) such that the section now reads as follows:**

**SECTION 6.12 INDEPENDENT AUDITS.**

- (a) There shall be an Independent City Auditor nominated and appointed by the Board of Aldermen based upon merit and after due consideration of qualifications for office.
  - (b) The Independent City Auditor shall report to the Board of Mayor and Aldermen or to such committee as the Board of Mayor and Aldermen may designate.
  - (c) It shall be the duty of the Independent City Auditor to assure that an independent audit shall be made of all books and accounts of the City at least once every year. The audit shall be performed in accordance with the auditing standards promulgated by the Comptroller General of the United States and by certified public accountants or a firm of such accountants experienced in municipal accounting who have no personal interest, direct or indirect, in the fiscal affairs of City government. The Independent City Auditor shall, through a competitive bid process, provide for the selection of the independent auditors in accordance with the City's procurement code. The results of such audit shall be made public and reported to the Board of Mayor and Aldermen.
  - (d) It shall be the duty of the Independent City Auditor to: (1) Conduct post-audits of the accounts and records of any City department. (2) Conduct such program result audits of a department as the Board of Mayor and Aldermen or any committee designated by the Board of Mayor and Aldermen may direct.
  - (e) An independent audit shall be made of all accounts of the school district at least annually, and more frequently if deemed necessary by the school board. Such audit shall be made by a certified public accountant nominated and appointed by the school board based upon merit and after due consideration of their credentials and experience.
- (Amended by electorate 11-2-04)

**Amend Article VI, Section 6.14 by adding the second sentence to the section such that the section reads as follows:**

**SECTION 6.14 FUND DEPOSITORIES.**

The Board of Mayor and Aldermen shall provide by ordinance for the designation of one (1) or more depositories of city funds, the periodic deposit of funds and the security required for such funds. The school board shall provide by vote for the designation of one (1) or more depositories of District funds, the periodic deposit of funds and the security required for such funds.

**Amend Article VI, Section 6.15 by striking the provision in its entirety and replacing it with a new section to establish a school district override process such that the same reads as follows:**

**SECTION 6.15 LIMITATION ON BUDGET INCREASE.**

*A. Limitation on budget increase.*

1. Recognizing that final tax rates for the City of Manchester are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35, I, the board of mayor and aldermen of the City of Manchester and the Manchester School District shall develop their annual budgets and shall act upon such proposed budgets in accordance with the mandates of this section.
2. Section 6.15 does not apply to the Enterprise Funds of the City of Manchester, i.e., the Aviation Department, the Environmental Protection Division, the Parking Division, the Water Works, the Recreation Enterprise Division and such other enterprise funds as duly created by the board of mayor and aldermen or school district. Section 6.15 does not apply to the Central Business Service District. Section 6.15 does not apply to amounts payable in connection with municipal bond obligations, whether issued for school or municipal purposes. *Override Provision.* City budgetary restrictions described in any part of Section 6.15 may be overridden upon a vote of two-thirds (2/3) of all aldermen. School district budgetary restrictions described in any part of Section 6.15 may be overridden upon a vote of two-thirds (2/3) of all school board members. Such override only applies to the budget then under consideration. Supplemental appropriations require two-thirds (2/3) override votes, or the limitations expressed in this section will apply.
3. In submitting their proposed budgets to the board of aldermen and school board, the mayor and school district shall not propose total expenditures excluding amounts payable in connection with municipal bond obligations in an amount exceeding the budget established during the prior fiscal year, excluding amounts payable in connection with municipal bond obligations for the prior fiscal year, increased by a factor equal to the average of the changes in the Consumer Price Index-Urban (CPI-U) for the three (3) calendar years immediately preceding budget adoption as published by the U.S. Bureau of Labor Statistics. If the average of the changes in the Consumer Price Index-Urban as published by the United States Department of Labor for the three (3) immediately preceding calendar years declines, then the increase in total expenditures, excluding amounts payable in connection with municipal bond obligations, shall be zero.

4. In establishing a combined municipal or school board budget, the board of mayor and aldermen and the school board, as applicable, shall assume estimated property tax revenues only in an amount not to exceed the property tax revenues raised, excluding property tax revenues raised for amounts payable in connection with municipal bond obligations, during the prior fiscal year increased by a factor equal to the average of the changes in the National Consumer Price Index-Urban as published by the United States Department of Labor for the three (3) calendar years immediately preceding the year of the budget adoption. If the average of the changes in the Consumer Price Index-Urban as published by the United States Department of Labor for the three (3) immediately preceding calendar years declines, then the increase in property tax revenues, excluding property tax revenues raised for amounts payable in connection with municipal bond obligations, shall be zero.

*B. Exception to budget increase limitation.* Capital expenditures may be excepted from being included in the expenditures that are subject to the prior limitation upon a two-thirds (2/3) vote of all the aldermen or pursuant to the school district override process, as applicable. Capital expenditures include land, land improvements, easements, buildings, building improvements, vehicles, machinery, equipment and infrastructure assets. The exception made under this section shall only apply to the budget then under consideration, unless two-thirds (2/3) of all the aldermen elected in the case of the city budget or two-thirds (2/3) of all the school board members in the case of the school district budget vote to renew the exception for the next budget year.

*C. Budget limitation in revaluation year.* When there is a citywide revaluation, the board of mayor and aldermen shall adhere to the following limitations for a positive or negative revaluation: Property tax revenues raised in the prior fiscal year, excluding property tax revenues raised for amounts payable in connection with municipal bond obligations of the prior fiscal year, shall not be increased by a factor more than the average of the changes in National Consumer Price Index-Urban as published by the United States Department of Labor for the three (3) calendar years immediately preceding budget adoption, then this figure shall be used in establishing the new municipal budget.

*D. Budget limitation with annual changes in assessments.* When annual changes in real estate values occur as a result of State of New Hampshire assessing requirements, the board of mayor and aldermen and school district shall adhere to a maximum increase in real estate tax revenues as follows: 1. The real estate taxes raised from the prior year shall not be increased by a factor of more than the average of the changes in the National Consumer Price Index Urban as published by the United States Department of Labor for the three (3) calendar years immediately preceding budget adoption, plus real estate taxes calculated by applying the prior year real estate tax rate to the net increase in new construction. "Net increase in new construction" is defined as the total assessed dollar value resulting from building permit activity less total assessed dollar value resulting from demolition permit activity for the period of April 1 - March 31 preceding budget adoption.

*E. Total Expenditures.* Total expenditures, excluding amounts payable in connection with municipal bond obligations, for any given budget year shall not exceed the amount of funds reasonably calculated to be derived from property tax revenues pursuant to Paragraph A.4. herein, increased by the other revenues generated by the City and school district.

F. *Effective Date*: Upon Passage (Approved by electorate 11-3-09; amendment approved by electorate 11-8-11).

**Amend Article VIII, Section 8.04 by replacing references to “committee” with “board” such that the section reads as follows:**

**SECTION 8.04 COMPENSATION OF OFFICIALS.**

- (a) The board of mayor and aldermen may determine the salaries of aldermen and school board members by ordinance provided that no ordinance shall take effect until the commencement of the next term of office of the board of mayor and aldermen.
- (b) The salary of the mayor shall be set at sixty-eight thousand dollars (\$68,000) after the election of a new mayor at the next municipal general election. The mayor's salary shall not be increased from the time of any election until the close of the term of the mayor then elected. The board of aldermen shall have the power to increase the mayor's salary as they deem necessary, but shall not lower said salary.

**Amend Article VIII, Section 8.05 by replacing “committeeman” with “board member” such that the section reads as follows:**

**SECTION 8.05 INCOMPATIBILITY OF OFFICE.**

- (a) No elected city official shall be employed by the city or by the school district until completion of the term for which the official was elected.
  - (b) Acceptance of the elected office of mayor, alderman or school board member by a city or by a school district employee shall result in termination of employment.
- (Approved by electorate 11-8-05)

**Amend Article IX, Section 9.02 by replacing “member of school committee” with “school board member in subsection (b) such that the section reads as follows:**

**SECTION 9.02 DEFINITIONS.**

- (a) *Business*. Any corporation, partnership, sole proprietorship or other business entity whether or not for profit. Such definition does not include governmental entities.
- (b) *City official*. Mayor, alderman, or school board member.
- (c) *Immediate family*. Spouse, children and spouses of children, step-children and spouses of stepchildren.
- (d) *Financial interest*. A monetary or pecuniary interest in a business, entity or matter, whether direct or indirect, not shared by the public at large. A city official shall have a financial interest in the affairs of immediate family members, any business in which the official is an officer, director, proprietor, partner, trustee, member or employee, or any investment in which the official owns directly or indirectly, more than five percent (5%) of the total stock or an interest totaling \$50,000 or more.
- (e) *Personal interest*. Interest in a matter which is other than that of the official as a public official and which is more direct than that of the public at large and would influence the action of the public official.

**Amend Article IX, Section 9.03 by rewriting the same to apply to school board members such that the section reads as follows:**

**SECTION 9.03 STANDARDS OF CONDUCT.**

This code is written to establish standards of conduct for city officials. It is declaratory and is to be read consistently with the requirements of New Hampshire law and not to create duties less stringent than those required by New Hampshire law. It shall not limit the board of mayor and aldermen or school district from enacting consistent ordinances or rules.

(a) *Contracts and Purchases.* A city official shall not have an undisclosed financial or direct personal interest in any contract with the city or school district. In the event a business or family member shall have any such interest, it shall be disclosed if pre-existing the official's taking office, or disclosed prior to any vote to enter such arrangement is taken by the board of mayor and aldermen or the school board.

(b) *Appointment or employment of immediate family member.* No city official shall participate in any way in any decision to employ or appoint any immediate family member to any city or, in the case of a school board member, school district position nor any personnel action in connection with such employment or classified appointment.

(c) *Disclosure of confidential information.* A city official shall not disclose confidential information concerning the city or, in the case of a school board member, the school district or its business without proper legal authorization; nor shall any official use any such information to advance a private interest. Confidential information is information which the official obtains because of the position held which is not a matter of public record.

(d) No city official shall accept any gift or thing of value which is offered to affect the vote or action of the official, nor shall any official solicit any such gift. This shall not prohibit legal campaign contributions or admission to events to which officials are invited in their official capacities, or food or beverage consumed at such events.

(e) *Conflict of interest.* No city official shall participate in the decision-making process of any matter in which the official or a member of the official's immediate family has a direct personal or financial interest. Any official who believes such an interest exists shall disclose such interest and shall not participate in the matter further. In the event any other official believes an official has a conflict, such conflict shall be disclosed to the city clerk who shall make a record of it. If the official does not believe such a conflict exists, the board of mayor and alderman, or school board if the official is a member of the school board, shall make a determination and if it finds a conflict exists, the official shall not participate in the matter further, or the appropriate board may refer the matter to the Conduct Board.

(f) *Financial disclosure.* Within 90 days after the effective date of this charter, the city clerk shall prepare a financial disclosure form requiring all city officials to disclose their own individual business and financial relationships, employment and financial holdings. Such filings shall be updated annually before January 15.

(g) *Non-interference.* The board of mayor and aldermen, the various boards and commissions and the school board shall act in all matters as a body, and shall not seek individually to influence the official acts of any city official, or to direct or request, except in writing, the appointment or removal of any person to or from office; or to

interfere in any way with the performance by such officers of their duties. This provision shall not prohibit assistance to constituents in their dealings with city officials if direct requests to the appropriate administrative officials have been unsuccessful, advocacy of particular outcomes on matters pending before the city when the matters are of a general nature, or submission of recommendations or references on behalf of a candidate for city employment which are not inconsistent with this code.

**Amend Article IX, Section 9.04 by replacing the phrase “school committee” with “school board” such that the section reads as follows:**

**SECTION 9.04 CONDUCT BOARD.**

A conduct board is established and shall consist of five (5) members and two (2) alternates to: issue advisory opinions to the board of mayor and aldermen or school board, if requested to do so by said board, concerning this code and the actions of city officials; Interpret this code; investigate violations of this code if requested to do so by city officials, written and attested complaints by citizens of the city or those doing business with the city, if it finds basis for such complaints, and issue reports after such investigations to the board of mayor and aldermen which may take action after such reports if it deems action necessary and, recommend ordinances to carry out the purposes of this code. One member shall be the chief legal officer of the city. Two members and one alternate shall be appointed by the mayor and confirmed by the vote of eight (8). Two members and one alternate shall be appointed by the board of aldermen by nine (9) votes. No more than three (3) members of the same political party shall serve on the board at the same time. At least one (1) member shall have served as an alderman previously. Members shall be appointed for terms of three (3) years and such terms shall be staggered so no more than two (2) members and one (1) alternate are appointed at one time. Members may not serve for more than six (6) consecutive years.

**Amend Article X, Section 10.9 by replacing the phrase “school committee” with “school board” such that the section reads as follows:**

**SECTION 10.09 ELECTION OF AT-LARGE ALDERMEN AND SCHOOL BOARD MEMBERS.**

The Board of Aldermen and the School Board shall increase to 14 members upon the election and swearing in of at-large members of the board of aldermen and school board elected at the municipal general election in November of 1997. The city clerk shall prepare such necessary materials as may be necessary to provide for the election of at-large members of the board of aldermen and school board at the municipal primary election and the municipal general election of 1997.