



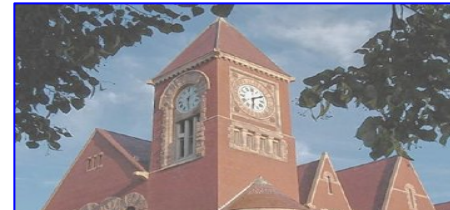
LEAGUE OF WOMEN VOTERS OF AMHERST - APRIL 14, 2024

CHARTER REVIEW TASK FORCE

Second in a series of public discussions of potential Amherst Home Rule Charter amendments, based on the League's "Good Government" principles.

TASK FORCE BACKGROUND

- **LWVA 2022 Annual Meeting: Members voted to conduct a review of the Amherst Home Rule Charter in relation to the LWVA's Good Government Principles. The move was made in anticipation of the Town-required review in 2024, and an LWVA Task Force was created.**
- **2022-2023: The Charter Review Task Force conducted a resident survey guided by the LWVA principles, and published the results, which are available on the LWVA's website.**



TASK FORCE BACKGROUND

- The Task Force's survey concluded that many survey respondents are not fully satisfied with how Amherst government is functioning. It also found that among the 13 Massachusetts towns that use Amherst's form of government, (City Council and Town Manager) it is a common practice to amend or change Home Rule Charters, by using an array of processes established under state law.



THE AMHERST CHARTER'S PERIODIC REVIEW REQUIREMENT

“The Town Council shall provide, in every year ending in a 4, for a review of the Charter by a special committee to be established by Town Council ... the committee shall file a report within 1 year recommending any changes to the Charter which it deems necessary or desirable.” - Amherst Home Rule Charter



The LWVA'S "Good Government" Principles

1. **Widespread and inclusive** participation
2. **Diversity** in the community reflected in government
3. **Openness** and full disclosure
4. **Checks and balances** of power among the executive, legislative and administrative branches of government and the electorate
5. **Honesty and non-corruptibility** in all decision-making
6. **Efficiency**, based on professional management and timely decision making
7. **Accountability** for political and fiscal decisions

MASSACHUSETTS LAW & CHARTER CHANGE PATHWAYS

The Home Rule Amendment to t

about, and themes you've identified.

You have reflected on your teaching and learning regularly throughout the program. For this assignment, read over your weekly reflections, think about all aspects of your experiences in the classroom and identify themes, strengths, challenges, and areas of progress. Write about what you learned, what you're thinking

he Massachusetts Constitution and the Home Rule Procedures Act provides several paths that cities and towns now use to modify charters.

- A change to the legislative body, including terms of office, and modes of election or appointment, must be proposed by an elected Charter Commission
- Other amendments can be proposed by a $\frac{2}{3}$ vote of a city or town council, followed by public hearings and submission of the intended change to the Attorney General's office and the voters
- A community can also adopt, revise or amend a charter by a special act of the State Legislature with the governor's approval

THE TASK FORCE'S CURRENT EFFORTS & NEXT STEPS

- Studying Amherst Home Rule Charter articles and finding resources about municipal government & best practices
- Met with/receiving comments from original Amherst Charter Commission members
- Met with/receiving comments from sitting and former Town Council members
- Will observe the Town's Charter Review process, and update the Steering Committee on developments (The Town Council created a charge for the 2024 Town Council Charter Review Committee and will be composing the committee soon.)
- Collecting data to make recommendations to LWVA membership about whether specific amendments or revisions to the Charter are warranted based on the Good Government Principles

LWVA DISCUSSION SESSIONS



Sunday, March 17th, 2:00 - 3:30 PM

Town Council (Article 2)

Financial Policies and Procedures (Article 5)

<https://us06web.zoom.us/j/82820853930?pwd=MD4VEgnNHPUQh59b30AGHPPAbvbTr6.1>

Sunday, April 14th, 2:00 - 3:30 PM

Town Manager (Article 3)

Incorporation Powers (Article 1)

Elections (Article 7)

<https://us06web.zoom.us/j/83271559250?pwd=hESFauTfCYXMtW7r7teejAi5RTSayf.1>

Sunday, May 5, 2:00 - 3:30 PM

Public Participation (Article 8)

Transition Procedures (Article 10)

<https://us06web.zoom.us/j/83034246172?pwd=0z9cTpybUhSjPnmxrl8OEY4bNIYcQL.1>

LWVA CONSENSUS MEETING

The LWVA will hold a Consensus Meeting on June 2, from 2-4 p.m., to hear the recommendations of the Charter Review Task Force, and to determine final LWVA recommendations for any amendments to the Home Rule Charter. Details about that meeting will be forthcoming on the LWVA's website, <https://www.lwvamherst.org/>



QUESTION 1

Should the powers and duties of the Town Manager be limited or delineated more clearly?

RELEVANT CHARTER SECTIONS

SECTION 3.2: EXECUTIVE AND ADMINISTRATIVE POWERS AND DUTIES

SECTION 3.3: POWERS OF APPOINTMENT

SECTION 3.4: POWERS OF SUSPENSION AND REMOVAL



RATIONALE FOR POSSIBLE AMENDMENT

LWVA Principles: Checks and balances, accountability, openness and full disclosure

- The Town Manager is an appointed, rather than elected position under the Charter, and those who serve are not directly accountable to the voters. Instead, any attempt by the public to influence the Town Manager's decisions or actions, must take place through an elected intermediary body - the Town Council.
- In the absence of very clear delineation of the Town Manager's role, this form of government can lend itself to an accumulation of power by the Town Manager's office, including the potential for greater influence over policies than the Charter may have envisaged.

COUNCIL EXPERIENCE

The Town Manager's significant influence is seen in several areas, including in the budget process, and powers of appointment. The Manager has power to set budget/budget policies, and has initiated certain practices in the absence of explicit Town Council direction. The Town Manager's allocation of staff is not always aligned with adopted Council goals.

- A per-resident staffing policy, which sets staffing for the Town at half the state average
- Dissolution of waste reduction staff, committee
- Delayed construction and maintenance practices
- Grant application prioritization
- Committee and board appointment transparency
- Less resident participation on committees
- Staff retention issues



BEST PRACTICES

In a 2004 analysis of when decision-making powers should be given to the public directly, as opposed to accountable officials, or to non-accountable officials, Harvard University Economics Professor Eric Maskin and researcher Jean Tirole concluded that:

- Technical decisions, in particular, may be best allocated to appointed bureaucrats
- The most important decisions should be made by elected rather than non-accountable officials
- The discretion of non-accountable (or un-elected) officials should be more limited than that of accountable ones



QUESTION 2

Should resident committee applications submitted to the Town Manager be considered public records/open to public view?

RELEVANT CHARTER SECTION

3.3c(c) The Town Manager shall appoint all members of multiple-member bodies. Members ... shall be residents of the Town at the time of appointment and throughout the term ... unless otherwise approved by Town Council ... The Town Manager shall establish a Residents' Advisory Committee to assist with evaluation and selection ... (and) shall seek to appoint individuals with relevant expertise or experience. The Town Manager shall establish policies and practices to actively encourage a diverse pool of applicants for multiple-member bodies.



RATIONALE FOR POSSIBLE AMENDMENT

LWVA Principles: Transparency, Widespread and Inclusive Participation, Accountability, Diversity, Checks and Balances

The public has an interest in knowing who applies for town boards and committees. In addition, if council members don't know who applied, or how many applied, they can't meaningfully exercise their power to support or reject a nominee recommended by the Town Manager. If they don't know the demographics of the pool, they can't advocate for more diversity.

COUNCIL EXPERIENCE

- Recent experience with the pool of applicants for the School Building Committee. The Council didn't know who was in the pool besides the person the Town Manager wanted to appoint.
- Experience with the Chair of the Personnel Board, who was reappointed after 12 years on the board, without the Town posting a notice of vacancy. There were no applicants.



BEST PRACTICES

The City of Northampton asks applicants for boards and committees to check a box on the application, agreeing that the application is a public record that can be shared. Applicants' names and applications can be accessed via a link.



QUESTION 3

Should the length of the Town Manager's Contract be the same as the length of a Council Session?

RELEVANT CHARTER SECTION

SECTION 3.5: COMPENSATION

The Town Manager shall receive such compensation for services as the Town Council shall determine, but such compensation shall be within the limits of available appropriations.

(And MGL c. 41, Sec. 108N)



RATIONALE FOR POSSIBLE CHARTER AMENDMENT

LWVA principle: Checks and balances

If the Town Manager's contract extends beyond the term of the sitting Council, that Council has no power or leverage over him/her except for malfeasance. Thus there is an imbalance of power. This might be more acceptable in a municipality with both a Town Manager and an elected Mayor as executive, but when there is only a Manager, his power as sole (unelected) executive is balanced against the elected council.



COUNCIL EXPERIENCE

- The current Town Manager was hired in 2016, prior to adoption of the Charter. The first contract ran **through August 2019**.
[Employment-Agreement-Bockelman-82216-to-82109 \(amherstma.gov\)](#)
- The first contract under the new Town Council was from **August 22, 2019 through August 31, 2023**
[Town-Manager-Signed-Contract-9-9-2019 \(amherstma.gov\)](#)
- In a December 6, 2021, Executive Session, the President of the Town Council proposed the extension of the contract for a further two years - **to August 2025**. Two Councilors expressed concern about extending the term of the contract beyond the term of the Council, which could tie the hands of the next Council.
- On December 11, 2023, the Council approved a further extension of the Town Manager's Contract **through August 21, 2027**.

BEST PRACTICES

With a Council/Manager form of government, there are fewer checks and balances between the legislative and executive branch. The power of the Council over the unelected Manager's contract is an example of a potential power of the legislature. Without it, the Council has little leverage over the Manager's actions. Were the contract to terminate at the midpoint of each 2 year legislative session, the power would be more balanced and the yearly Manager evaluations would be much more meaningful.



QUESTION 4

Should the Town Manager's evaluation be conducted by an independent third party?

RELEVANT CHARTER SECTION

SECTION 3.9: The Town Council shall conduct an annual review for the purpose of assessing the Town Manager's performance.



RATIONALE FOR POSSIBLE AMENDMENT

LWV principles: Participation, Openness, Honesty and non-corruptibility, accountability

An independent third party would not be constrained by the need to maintain a close working relationship with the Town Manager, and might be able to offer more objective analysis of the Manager's performance.



COUNCIL EXPERIENCE

The Town Council evaluates the Manager yearly. The process includes:

- Individual councilor evaluations
- Staff evaluations
- Public evaluations (open-ended questions)
- The Council president drafts the compilation memo, composite evaluation/cover letter

During the most recent Town Manager evaluation (November, 2023) the Council President received some criticism because the draft evaluation did not fully reflect the diversity of views (or the range of comments) among the Town Councilors. (The final evaluation was amended to include contrasting perspectives from some Council members).



BEST PRACTICES

“Facilitated” Review of A Chief Administrative Officer

<https://icma.org/articles/pm-magazine/better-way-facilitated-cao-performance-review>)

“There is a way for the annual performance evaluation process to be easier, more useful, and helpful for everyone involved, where the appointee receives specific feedback and clear goals: the *facilitated* evaluation. A third party manages the evaluation process, acts as a neutral party to gather data from elected officials (and sometimes from the manager’s or appointee’s colleagues), analyzes the data, and presents the findings to the manager in a way that encourages growth.”



QUESTION 5

Should the Charter include an elected executive?

RELEVANT CHARTER SECTION

SECTION 1.3: DIVISION OF POWERS

All legislative powers of the Town shall be exercised by a Town Council hereafter established by this Charter. The administration of all Town fiscal, prudential, and municipal affairs shall be vested in the executive branch headed by the Town Manager.



RATIONALE FOR POSSIBLE AMENDMENT

LWVA Principle: Checks and Balances, Accountability, Public Participation

The Amherst Charter Commission weighed both the Council/Mayor and Council/Manager options, and members initially advocated for the Council/Mayor form. “Unlike a mayor, a manager is not accountable to the voters,” wrote former Commissioner Mandi Jo Hanneke in a 2017 memo. “The manager reports to the council, not the voters. The voters cannot vote him out, and can only affect change by voting out councilors who may or may not seek to terminate (or not review) a manager’s contract.”

The 351 municipalities in Massachusetts include 50 cities, or municipalities with small legislative bodies such as a council or Select Board, plus a chief executive, who is either elected (a mayor) or appointed (a town manager.) There are 12 with appointed managers including Amherst.

COUNCIL EXPERIENCE

In practice, the Town Manager appears to have more influence over decision-making in Amherst than the elected Town Council, through his development of the budget and control over the recruitment and appointment processes.



BEST PRACTICES

- In the Mayor/Council form of government, voters directly elect both the mayor and council, and the mayor is the chief executive who appoints key officials. The mayor, according to the Massachusetts Municipal Association, prepares a budget, approves contracts, negotiates with unions and oversees administration. The elected Council is clearly the legislative body, votes on and adopts budgets and laws, and approves debt.
- In the Manager/Council form, the manager performs most of the same functions above, but is appointed by the Council, rather than elected by the voters. Under this structure, the manager cannot be removed except by the Council. Moreover, the manager and Council effectively function as a single unit, with potential blurring of the distinction between executive and legislative functions of local government.

QUESTION 6

Should the Town elections be held in even numbered years to coincide with national elections?

RELEVANT CHARTER SECTION

7.1 The regular Town election shall be held on the first Tuesday following the first Monday in November in each odd-numbered year.



RATIONALE FOR POSSIBLE AMENDMENT

LWVA Principles: Widespread and inclusive participation, diversity

The League position is to increase public participation and voter turnout. Voting on even-numbered years has been shown to significantly boost participation.

“In practice, turnout for local elections scheduled concurrently with state or national elections does tend to be much higher than turnout for local elections that are off cycle,” [M.I.T. Election Data & Science Lab](#)



COUNCIL EXPERIENCE

There is growing interest across the state in changing local voting to even numbered years:
<https://www.bostonglobe.com/2023/11/07/opinion/elections-even-years-voter-turnout-massachusetts/> (Summary [here](#).)

“Moving to even-year elections is doable. In Massachusetts, municipal election dates are set by each city’s charter ... Many local officials operate under a misperception that this arrangement cannot be altered ... However, election timing can be changed with legislative approval ... Massachusetts cities should undertake this process, and the Legislature should approve these efforts. The Legislature could also facilitate such changes by amending state law.”



BEST PRACTICES

Increasing voter turnout

In New York State, a bill enacted by Gov. Kathy Hochul and the Legislature in December, 2023 will move many county and local elections to even-numbered years, aligning them with federal and state elections that reliably draw more voters to the polls. Research supports this move, according to a recent [New York Times article](#).

A [report](#) by the Manhattan Institute, (a conservative think tank), found that changing local elections to coincide with national elections led to more accountable and responsive government, and ultimately saved taxpayers money.

A 2005 study in The Journal of Politics [found](#) that moving local elections to even-numbered years increased turnout among Black voters, and that consolidating elections could make it easier for working-class voters and those living in poverty to participate.

FINAL COMMENTS

Please send any remaining comments that you would like the Task Force to consider to: 1jrhynes@gmail.com (with topic line: “LWVA Charter Comment”)

Your participation in this and future discussion sessions is appreciated!

The LWVA Charter Review Task Force

