

**Public Notice of the Town of Winterport**  
is hereby given that the Town Council will hold a **Town Council meeting** in person  
(Town Office 44 Main Street)  
**Tuesday, January 24, 2023 at 7:00 P.M**

to consider the following:

**AGENDA**

**Call to Order**

**Roll Call**

**Consent Agenda** (items marked with an asterisk \*)

**Adopt Agenda**

**Financial Reports:**

<b>January 24, 2023</b>	<b>February 07, 2023</b>
Gen. Fund Cash Position, reserves, Trusts and Investments YTD	Expenditures/reserves & Budget Bal. Monthly (Regular Format) Quarterly
Current Year Property Tax	Gen. Fund, Gen. Ledger summary (Detail New)
	Liens & Foreclosures Status

**Payroll and Invoice Warrants**

A. Payroll through Sunday, January 22<sup>nd</sup>, 2023.

B. Invoices through Monday, January 23<sup>rd</sup>, 2023.

**Guest Speakers & Committee Reports-**

**Input from Citizens on Unscheduled Items-**

**Town Manager Presentation-** No Presentation

**Schedule of Meetings**

A. January 24, 2023 & February 07<sup>th</sup>, 2023\*

**Accept Minutes**

A. Town Council Meeting Minutes January 10<sup>th</sup>, 2023

**Scheduled Items:**

A.) **Old Business** – Containers for TS (Josh Wellman)  
Maine Connectivity (Grant Agreement)

B.) **New Business**— Council Etiquette  
Debt Service Assumption Agreement  
Charlie Gilbert Email (Bangor Gas)  
Old Culverts at TS  
Advertise Public Works/ACO Position  
Policy for Procurement (Kevin Kelley)

**Legal:** None

**Appointments/Resignations:**

A. Resignations- None

**Correspondence/Significant Items**

Outgoing- None

**Minutes/Agendas: 1. Waldo County Commissioners Court Session Agenda**

**Communications:**

- A. Town Manager's Report-
- B. Response to Council Questions
- C. Council Comments

**Executive Session---**Town Manager Contract (Title 1 Chapter 13 405A)  
Town Manager Training/Clerks budget

**Signatures:**

**Adjourn:**

**NOTE:**

**Meetings:**

Dates & Time of other meetings between January 24, 2023 and February 07, 2023  
Land Use Ordinance Review Committee

**Training & Days Off:**

- the appointment of all department heads and, through them, all municipal employees;
- the preparation of the municipal budget for approval at town meeting;
- the administration of that budget once adopted;
- the coordination of all administrative duties, including those which are not performed directly by the manager;
- the regulation of departmental spending; the development and execution of an administrative plan for governmental activity; and
- the duties belonging to any other municipal office to which the manager has specifically been appointed and separately sworn by the municipal officers.

Title 30-A M.R.S.A. § 2636 lists the duties of the manager, some of which are subject to modification or clarification by charter or ordinance. For example:

- under § 2636(4), the manager is to serve as the head of any department when so directed by the municipal officers;
- under § 2636(5), the manager is to appoint, supervise and control the heads of departments which the manager does not head;
- under § 2636(6), the manager is to appoint, supervise and control all other municipal officials whom the municipal officers are required by statute to appoint, except boards and commissions, or unless otherwise provided by municipal ordinance; and
- under § 2631, a municipality may determine whether other municipal officials will remain elected under the municipality's manager plan, including: assessors, tax collector, road commissioner, overseers of the poor, clerk, and treasurer.

In other words, a municipality has some flexibility in determining which offices will be combined under the town manager, which departments will be headed by the town manager, which departments will have a separate department responsible to the manager, and which offices will remain elected, as allowed by certain statutes. Furthermore, it is the municipal officers and not the manager who appoint commissions, boards or committees. In addition, the position of single assessor, if the municipality has just a single assessor, also is filled by the municipal officers' appointment.

Despite this flexibility, the municipal officers are bound to certain procedures when the town has a manager. For example, 30-A M.R.S.A. § 2635 prohibits the municipal officers from giving orders to any subordinates of the manager (including all municipal employees) either publicly or privately. Section 2636(14) also gives the manager "exclusive authority to remove for cause, after notice and hearing, all persons whom the manager is authorized to appoint...." (See discussion in Chapter 9 on "The Town Manager Dilemma.")

- the appointment of all department heads and, through them, all municipal employees;
- the preparation of the municipal budget for approval at town meeting;
- the administration of that budget once adopted;
- the coordination of all administrative duties, including those which are not performed directly by the manager;
- the regulation of departmental spending; the development and execution of an administrative plan for governmental activity; and
- the duties belonging to any other municipal office to which the manager has specifically been appointed and separately sworn by the municipal officers.

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## General Ledger Detail Report

ALL Accounts  
ALL Months

01/19/2023

Page 1

Account-----					-- B A L A N C E --	
Date	Jrnl	Desc---	Debits	Credits	Debit	Credit
1 - GENERAL FUND/GENERAL LEDGER					0.00	
000-00		GENERAL FUND/GENERAL LEDGER			832.69	
102-00		PETTY CASH			550.00	
102-01		BASKETBALL TOURNEY PETTY CASH			300.00	
102-02		TRANSFER STATION PETTY CASH			50.00	
103-00		WATERFRONT CD			31,390.14	
110-02		2002 TAXES				848.81
110-09		2009 RE TAXES				134.56
110-11		2011 RE TAXES			0.08	
110-15		2015 RE TAXES			1,536.18	
110-19		2019 RE Taxes				2,859.11
110-20		2020 RE Taxes			3,077.34	
110-21		2021 RE TAXES				3,455.53
110-22		2022 RE TAXES				567.71
110-23		2023 RE Taxes		1,907,193.11		
110-24		2024 RE TAXES				611.15
111-00		CHECKING CAMDEN NATIONAL		1,621,337.42		
112-00		CHECKING IRS ELECTRONIC TRANSF				662.56
114-00		ARPA CNB SAVINGS ACCOUNT		421,367.96		
115-12		2012 LIENS		1,134.98		
115-18		2018 Liens				2,655.03
115-19		2019 Liens				616.44
115-20		2020 LIENS				2,949.66
115-21		2021 LIENS			0.00	
115-22		2022 LIENS		56,877.90		
120-13		2013 Tax Acquired		406.67		
120-14		2014 Tax Acquired		405.45		
120-15		2015 Tax Acquired		119.88		
120-16		2016 Tax Acquired				269.32
120-17		2017 Tax Acquired		799.01		
120-18		2018 Tax Acquired		3,413.44		
120-19		2019 Tax Acquired		4,421.04		
120-20		2020 Tax Acquired		5,203.54		
120-21		2021 TAX ACQUIRED		17,385.05		
120-22		2022 TAX ACQUIRED		24,036.34		
120-23		2023 TAX ACQUIRED		25,567.39		
121-65		DUE FROM TRUSTS		18.15		
131-00		ACCOUNTS RECEIVABLE		75,192.64		
132-00		WALDO COUNTY ARPA FUNDS				28,000.00
140-00		WINTERPORT ARPA FUNDS				421,367.96
197-00		RETURNED CHECKS (ACTUAL AMT)				6,222.63
201-00		ACCOUNTS PAYABLE		408,947.19		
201-60		ACCRUED SALARIES PAYABLE				6,541.25
203-00		VITAL RECORDS				2,969.00
204-00		AUTO TITLE FEES				451.76

# General Ledger Detail Report

ALL Accounts  
ALL Months

Account-----					-- B A L A N C E --	
Date	Jrnl	Desc---	Debits	Credits	Debit	Credit
<b>1 - GENERAL FUND/GENERAL LEDGER CONT'D</b>						
204-01		AUTO REG SALES TAX			1,548.34	
205-00		SECRETARY OF STATE (AUTO FEE)			3,737.18	
206-00		HUNTING & FISHING - STATE FEES			646.00	
207-00		PLUMBING LICENSE - STATE FEES			272.00	
207-01		SUBSURFACE SYSTEM SURCHARGE				2,529.00
208-00		DOG LICENSES - STATE FEES				580.00
209-00		ATV/BOAT/SNOWMOBILE -STATE FEE				4,923.56
210-00		SALES TAX - ATV/BOAT/SNOWMOBIL				3,711.21
211-00		MEDICARE WITHHOLDING (0.0145)		6,086.88		
211-01		MEDICARE W/H EFTPS				259.12
212-00		SOCIAL SECURITY W/H (0.062)		1,394.25		
212-01		SOCIAL SECURITY W/H EFTPS				4,530.01
213-00		FEDERAL TAX WITHHOLDING		980.82		
213-01		FEDERAL TAX W/H EFTPS				922.29
214-00		STATE TAX WITHHOLDING		714.10		
215-00		EMPLOYER MATCH IRA				1,720.48
217-00		PLUMBING INSPECTOR 65% FEES		190.00		
220-00		DEFERRED PROPERTY TAX REVENUE				199,241.89
223-00		INCOME PROTECTION/EMP PAY				907.51
226-00		AFLAC EMPLOYEE DEDUCTION		304.53		
226-01		HEALTH INSURANCE COPAY		23.01		
226-02		DENTAL INSURANCE COPAY				595.77
226-04		State Levy				355.33
227-00		IRA EMPLOYEE DEDUCTION				1,254.76
230-00		DUE TO TRUST FUNDS				25,343.80
232-00		DUE MUN REVENUE SHARING				47,398.76
239-00		DUE TO FERNALD FIELD RESERVE				829.45
240-00		DUE TO FUEL FUND				3,658.48
241-00		DUE TO FIRE DEPT CAP RESERVE				25,000.00
242-00		DUE TO PUBLIC WORKS CAP RESERV				4,486.90
243-00		DUE TO TRANSFER STATION RESERV				2,573.40
249-00		AMBULANCE YEARLY RENT PAYMENT				14,022.61
250-00		REC DONATIONS				2,357.66
251-00		FIRE DEPARTMENT DONATIONS				100.00
252-00		VGCC DONATIONS				755.19
256-00		CAP PROJ - CONSERVATION COMM				14,750.51
300-00		REVENUE CONTROL ACCOUNT				3,815,109.07
400-00		APPROPRIATION CONTROL				2,771,173.88
500-00		FUND BALANCE		2,802,812.42		
		Fund.....				0.00
<b>2 - TRUST FUNDS</b>						
100-00		Camden National Cash			0.00	
101-00		MCKENNY FUND IN/OUT			14,697.98	
101-01		MCKENNY FUND BEGIN BALANCE			12,923.65	
						162,128.56

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## General Ledger Detail Report

ALL Accounts  
ALL Months

01/19/2023  
Page 3

Account-----					-- BALANCE --	
Date	Jrnl	Desc---	Debits	Credits	Debit	Credit
<b>2 - TRUST FUNDS CONT'D</b>						
104-00		MCKENNY FUND INTEREST				1.20
105-00		MCKENNY FUND REVENUE				3,758.74
105-50		Change in FMV-McKENNEY				2,082.43
106-00		MCKENNY FUND EXPENSES				4,320.35
107-00		AMERICAN FUNDS IN/OUT		35,856.56		
107-02		AMERICAN FUND QRTL DIVIDENDS				815.88
108-00		EATON VANCE IN/OUT		117,239.27		
108-02		EATON VANCE DIVIDENDS				4,379.71
109-01		ATWOOD TRUST BEGIN BALANCE				884.15
109-04		ATWOOD TRUST INTEREST				0.08
110-01		THOMPSON TRUST BEGIN BALANCE				1,327.35
110-04		THOMPSON TRUST INTEREST				0.11
111-00		HALL TRUST FUND IN/OUT				15.15
111-01		HALL TRUST BEGIN BALANCE				1,003.66
111-04		HALL TRUST INTEREST				0.09
		Fund.....				0.00
<b>3 - TRANSFER STATION RESERVE</b>					0.00	
101-01		TRANSFER STA BEGIN BALANCE				33.39
104-00		TRANSFER STA RESERVE INTEREST				0.46
106-00		TRANSFER STA RESERVE EXPENSE		33.85		
		Fund.....				0.00
<b>4 - FIRE DEPARTMENT CAPITAL RESERV</b>					0.00	
101-00		FIRE DEP CAP INVESTMENT IN/OUT		120,603.04		
101-01		FIRE DEPT CAPITAL BEGIN BALANC				88,208.22
104-00		FIRE DEPT CAP RES INTEREST				143.87
105-00		FIRE DEPT CAP RES REVENUE				78,090.13
106-00		FIRE DEPT CAP RES EXPENSES		45,839.18		
		Fund.....				0.00
<b>5 - FERNALD FIELD CAPITAL RESERVE</b>					0.00	
101-00		FERNALD FIELD RESERVE IN/OUT		11,595.85		
101-01		FERNALD FIELD RES BEGIN BALANC				8,985.35
102-00		DUE TO FERNALD FIELD RESERVE				2,570.55
104-00		FERNALD FIELD RES INTEREST				39.95
		Fund.....				0.00
<b>6 - TOWN OFFICE CAPITAL RESERVE</b>					0.00	
101-00		TOWN OFFICE RESERVE IN/OUT		125,491.52		
101-01		TOWN OFFICE RES BEGIN BALANCE				119,197.42
104-00		TOWN OFFICE CAP RES INTEREST				195.10
105-00		TOWN OFFICE CAP RES REVENUE				10,000.00
106-00		TOWN OFFICE CAP RES EXPENSES		3,901.00		
		Fund.....				0.00
<b>7 - PUBLIC WORKS RESERVES</b>					0.00	
101-01		PUBLIC WORKS RES BEGIN BALANCE				20,022.58
104-00		PUBLIC WORKS EQUIP INTEREST				0.03
105-00		PUBLIC WORKS EQUIP REVENUE				12,033.85

0.00



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- 6.5 *Information Submitted with Application.* The representations, statements, and other matters contained in the Application are and remain true and complete in all material respects. Any financial statements or data submitted to MCA in connection with the Application present fairly, in all material respects, the financial position of the Grantee and the results of its operations in conformity with Accounting Requirements, and there has been no material adverse change in the financial condition or operations of Grantee since the Application submittal.
- 6.6 *Principal Place of Business.* Grantee's principal place of business is specified in Schedule 1 hereto.
- 6.7 *No Conflict of Interest.* Grantee has no current business or financial relationship with any State of Maine or MCA employee or official that could create a conflict with this Agreement and will not enter into any such business or financial relationships during the period of this Agreement. Grantee affirms that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any legally prohibited personal financial interest or benefit which either directly or indirectly arises out of this Agreement.
- 6.8 *Reporting.* The Grantee has the necessary processes and systems in place to comply with the reporting requirements for sub-recipients under the SLFRF Program as set forth in the Guidance and this Agreement with respect to the use of Grant funds.
- 6.9 *Ratification.* By executing this Agreement, the Grantee affirms and ratifies all statements, representations, and written documents that it has submitted to MCA in connection with this Grant, including, but not limited to the Certifications pertaining to federal and state debarment and suspension, prohibiting the use of federal funds for lobbying in the certification forms attached as Exhibit E, "Certifications."

## 7 AFFIRMATIVE COVENANTS

Unless otherwise agreed to in writing by MCA, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Section 7.

7.1 *Use of Advances.* The Grantee shall expend the Grant funds only for approved purposes as set forth in the Scope of Work Plan, the Request(s) for Advance, and in accordance with the Accounting Requirements. The Grantee acknowledges that MCA approval of any Request for Advance shall not be a waiver of any provision or requirement contained herein, but shall be subject to a subsequent compliance review.

### 7.2 *Unused and Disallowed Advances*

- (a) The Grantee shall return to MCA promptly any advanced Grant funds not disbursed by the Grantee for the Project or not needed to complete the Project.
- (b) The Grantee shall reimburse MCA for any advanced funds if the original expenditure has

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been disallowed by an MCA compliance review or any federal or State of Maine audit. Disallowances shall be satisfied, as directed by MCA, by either administrative offset against Requests for Advances or repayment of the disallowed amount directly to MCA.

### 7.3 Project Records and Financial Books

- (a) The Grantee shall maintain, at its premises or virtually in electronic record storage, accurate financial, management, programmatic and other records of the Grantee, of all transactions relating to the receipt and expenditure of the Grant and administration of the Project (collectively "Records"). The Records shall be in a commercially reasonable form acceptable to the MCA and wherever practicable, such records should be collected, transmitted, and stored in electronic, open, and machine-readable formats. Such Records include books, documents, papers, or other records and supporting documents, including, but not limited to, third- party invoices, receipts, timesheets, and bills of sale, adequate to identify the purposes for which and the manner in which Grant and other funds were expended on the Project.
- (b) The Grantee shall maintain all such Records and copies of forms or financial reports submitted to MCA in connection with the Grant for inspection or audit by MCA or other parties under this Agreement, for the longest of: (i) five years from the date the Grantee submits its final Project Performance Activity Report; or (ii) five years from resolution of disputed items with MCA.
- (c) The Grantee shall maintain complete, accurate, and current disclosure of the financial results of each Project in accordance with the reporting requirements of this Agreement. The source and application of funds shall be readily identified by the continuous maintenance of updated records, with all accounting records being supported by source documentation. Established procedures shall be used for determining the reasonableness, allowability, and allocation of costs in accordance with Accounting Requirements.

### 7.4 Rights of Inspection and Compliance Reviews

- (a) *Oversight and Audit.* During the term of this Agreement and for a period up to five years following the Project Completion Date, the Grantee shall afford MCA, the Maine State Auditor, the U.S. Government Accountability Office, the U.S. Treasury's Office of Inspector General (OIG, through their representatives), reasonable opportunity, at all times during business hours and upon prior notice, to access and inspect the Project and Records, and any and all books, records, accounts, including electronic books, records, accounts, and electronic mail messages, regardless of the physical form or characteristics, invoices, timesheets, contracts, leases, payrolls, canceled checks, statements, other documents, and papers of every kind belonging to or in any way pertinent to the Grant, and to make copies, audits, examinations, excerpts or extracts therefrom.
- (b) *Compliance Review.* The Grantee shall fully cooperate with MCA in any compliance review or audit to determine compliance with this Agreement and to determine whether expenditures and disbursements of the Grant were for approved purposes during the Project Term or five-year period following Final Project Completion Report submission.

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**7.5 Project Performance and Financial Reporting.**

- (a) **Reporting Obligations.** During the term of this Agreement, and for the period of five years following the Project Completion Date, Grantee shall cooperate and comply with all reasonable requests by the MCA with respect to validation and reporting requirements in this Agreement. Grantee shall track and record all data and other information necessary to complete the reporting forms templates provided by MCA for the reports below, consistent with the Guidance. Grantee acknowledges that the Treasury may amend the reporting requirements and templates and will follow such revised Guidance requirements when reporting under this section.
- (b) **Required Reports.** Grantee shall submit quarterly Project and Expenditure Reports, annual Performance Reports, and a Final Project Performance Report with the information and on the schedule detailed in Exhibit F Project Reporting Requirements.
- (a) **Additional Requests.** The Grantee shall furnish to MCA such information regarding the condition, financial or otherwise, or operations of the Grantee as MCA may, from time to time, reasonably request.

**7.6 Obligations with Respect to Project Management**

- (a) **Project Management and Operation.** The Grantee shall be responsible for managing the day-to-day operations of the Project and will operate the Project in an efficient and economic manner. The Grantee shall provide the services described in the Application and shall monitor contractors and third-party participants to ensure the Project is operated in accordance with representations in the Application.
- (b) **Procurement Requirements.** The Grantee shall conduct all procurement transactions in accordance with 2 CFR §§200.317-326, unless it has received written approval otherwise.

**7.7 Compliance with Laws, Regulations, and Guidance**

- (a) **Grantee Compliance requirements.** The Grantee will comply with all applicable federal and State of Maine statutes, regulations, and other requirements that govern the Application, the Project, and use of federal and State Grant funds.
- (b) **Cooperation with MCA to meet General Guidance requirements.** Grantee acknowledges that MCA is responsible for oversight of SLFRF Grant funds to ensure Grantee use in compliance with all applicable laws, regulations, and Treasury Guidance. Grantee will cooperate fully with MCA in the reporting, evaluation, compliance, and other activities required of MCA by the Laws and Guidance.
- (c) **Uniform Administrative Requirements.** Grantee acknowledges that the SLFRF Grant funds under this Agreement are subject to the requirements set forth in the Uniform Administrative Requirements of 2 CFR Part 200, and will comply with those requirements

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including, but not limited to the Internal Controls, Allowable Costs/Cost Principles, and Cash Management summarized in the Guidance, and detailed in those regulations.

- (d) State and Local Fiscal Recovery Funds Specific Requirements. Grantee acknowledges that the SLFRF Grant funds under this Agreement are subject to the State and Local Fiscal Recovery Funds Program requirements, and that Grantee must comply with those requirements, including but not limited to the additional specific federal law provisions listed in Exhibit G, "State and Local Fiscal Recovery Funds Program Requirements." Grantee will comply with these provisions and will assure that any Project subcontractors comply with these provisions.

**7.8 SAM Registration and Unique Identifier Number.** The Grantee shall maintain a current and accurate listing in the federal System for Award Management (SAM) with a Unique Identifier Number as specified in Schedule 1, and shall notify MCA of any changes.

## **8 NEGATIVE COVENANTS**

**8.1 Contracts.** The Grantee shall not, without the prior written consent of MCA, enter into any contract or contracts for the implementation of the Project that are not already included in the approved budget.

## **9 TERMINATION, SUSPENSION AND OTHER REMEDIES**

### **9.1 Termination of the Grant**

- (a) *Termination of the Grant.* MCA, in its sole discretion, may terminate the Grant, in whole or in part if MCA determines that the Grantee has failed to materially comply with the terms and conditions of this Agreement; or if MCA, for any reason, determines that such termination is in the best interest of MCA.
- (b) *Notice of Termination.* MCA shall provide the Grantee with written notice of termination of the Grant as provided in this Section 9.1, setting forth the reason(s) for termination, the effective date of the termination, and, if MCA determines it appropriate, the period of time in which Grantee may cure the reason for termination.

**9.2 Effect of Termination of the Grant.** Upon termination of the Grant, the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant and shall cancel as many outstanding obligations as possible and seek to mitigate the costs of any outstanding obligations. Any unadvanced portion of the Grant not required for the Project shall not be available for advance by MCA and any advanced portion of the Grant not required by the Grantee for completion of the Project shall be immediately returned to MCA. MCA may pursue any MCA remedies allowed by law, including, but not limited to those listed under Section 9.

### **9.3 MCA Remedies for Grantee Non-Compliance**

- (a) Upon a determination by MCA that the Grantee did not document Grant expenditures for

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allowable costs as required in the Accounting Requirements, did not utilize the Grant in the manner and exclusively for the Project as approved by MCA, provided an incorrect certification or otherwise provided incorrect supporting documentation or information, or otherwise failed to comply with the Grant Agreement, MCA may, in its sole discretion:

- (i) Disallow all or a part of the expenditures and disbursements of the Grant and require the Grantee to deposit such funds into a separate account to be applied toward other approved Project purposes or to reimburse MCA, the State of Maine or Treasury for Grant funds disbursed by MCA to Grantee;
  - (ii) Suspend making Advances;
  - (iii) Terminate the Grant;
  - (iv) Set-off the amount of any reimbursement of Grant funds requested by MCA from the Grantee against any funds to be disbursed by the State of Maine to Grantee; and/or
  - (v) Take any other action MCA determines to be necessary including, without limitation, exercising any right or remedy available herein or at law.
- (b) MCA and the State of Maine shall have all of their respective common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to: (i) MCA's option to withhold for the purposes of set-off any monies due to the Grantee under this Grant Agreement for a MCA reimbursement claim under this Contract or for any other reason with regard to this Grant Agreement or any other grant agreement or contract with Grantee, plus any amounts due and owing to MCA for any other reason; (ii) MCA's right to seek a set-off of any monies due to MCA by Grantee against any funds to be disbursed by the State of Maine to Grantee; and (3) The State of Maine's right to instruct MCA to withhold any monies due to Grantee under this Contract for a State of Maine claim under any other grant agreement or contract between Grantee and the State of Maine, or for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The MCA and the State of Maine shall exercise their respective set-off rights in accordance with their respective normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MCA, the State of Maine, or the federal government.

**10 GRANTEE RELEASE OF MCA**

Grantee releases MCA and the State of Maine from, and agrees that the MCA and the State of Maine shall not have any liability for, any and all suits, actions, claims, demands, losses, expenses, and costs of every kind and nature, including reasonable attorneys' fees, incurred by, or asserted or imposed against MCA or the State of Maine by Grantee, as a result of or in connection with the Project, except for the gross negligence or willful misconduct of MCA or the State of Maine. This section shall survive the term of this Agreement.

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## 11 INDEMNIFICATION

Grantee shall indemnify and hold harmless MCA and the State of Maine, and their respective officers, directors, employees, agents, contractors, and sub-contractors from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Grantee, its officers, directors, employees, agents, contractors, or sub-contractors in the performance of work under this Agreement; provided, however, the Grantee shall not be liable for claims arising out of the negligent acts or omissions of the MCA or State of Maine, or their respective officers, directors, employees, agents, contractors, and sub-contractors, for actions taken in reasonable reliance on the written instructions of MCA. This section shall survive the term of this Agreement.

## 12. GENERAL

### 12.1 Notices

All notices, requests and other communications provided for herein shall be made in writing (including email) and delivered to the intended recipient at the "Address for Notices" specified below, or such other address as shall be designated by such party in a notice to the other party. Receipt of all such communications shall be deemed to have occurred when transmitted by email or personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

MCA  
Info@MaineConnectivity.org  
Attention: Get Ready CSP

Grantees  
Town of Winterport

With a copy to:  
See Schedule 1

With a copy to:  
See Schedule 1

**12.2 Expenses.** To the extent allowed by law, the Grantee shall pay all costs and expenses of MCA, including reasonable fees of counsel, incurred in connection with the enforcement of the Agreement or with the preparation for such enforcement if MCA has reasonable grounds to believe that such enforcement may be necessary.

**12.3 No Waiver.** No failure on the part of MCA to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by MCA of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

**12.4 Governing Law, Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maine, except those that would render such choice of law ineffective, as well as the applicable federal laws referenced in this Agreement. The Grantee submits to the jurisdiction of any state or federal court located within the State of Maine in any proceedings related to this Agreement.

MCA - Frankfort/Stockton Springs/Winterport Broadband Committee - Get Ready Grant Agreement

**12.5 *Successors and Assigns.*** This Agreement shall be binding upon and inure to the benefit of the Grantee and MCA and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of MCA. Pursuant to State of Maine claims collection laws, MCA's claims hereunder may be transferred to other State of Maine agencies; in the event of such transfer, all interests, rights and remedies hereby granted or conferred on MCA shall pass to and inure to the benefit of any such successor agency.

**12.6 *Complete Agreement; Waivers and Amendments.*** This Agreement is intended by the Parties to be a complete and final expression of their agreement. However, MCA reserves the right to waive its rights to compliance with any provision of this Agreement. No amendment, modification, or waiver of any provision hereof, and no consent to any departure of the Grantee, shall be effective unless approved in a writing signed by or on behalf of MCA, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**12.7 *Headings.*** The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

**12.8 *Severability.*** If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

**12.9 *Schedules, Attachments, and Counterparts.*** Each Schedule and Attachment hereto and referred to herein is each an integral part of this Agreement. This Agreement and all amendments hereto, may be executed in any number of original counterparts, each of which when so executed and delivered shall be an original, and all of which, collectively, shall constitute one and the same agreement, it being understood and agreed that the signature pages may be detached from one or more counterparts and combined with the signature pages from any other counterpart in order that one or more fully executed originals may be assembled.

**12.10 *No Third-Party Beneficiary.*** This Agreement is exclusively between MCA and the Grantee and does not, nor is intended to, create any privity of contract with any other party not a party hereto, nor to imply a contract in law or fact. Any funds advanced by MCA to the Grantee are intended to finance the Grantee's Project. Any approvals given by MCA to the Grantee are solely for the benefit of MCA. MCA is not obligated to advance grant funds on any contract, or otherwise, between the Grantee and any other party, nor intends to assume, at any time, direct obligations for payment for work, goods, or other performance under such contracts. The obligation to pay any amounts due under such contracts is solely the responsibility of the Grantee. Nothing herein, express or implied, is intended to, or shall confer upon, any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Grant Agreement between MCA and the Grantee.

MCA - Frankfort/Stockton Springs/Winterport Broadband Committee - Get Ready Grant Agreement

**12.11 Public Information.** MCA intends to make available to the public certain information regarding the Project and the Grantee, and will disclose information about the Project to Treasury and other State of Maine officials. Information that may be disclosed to any of the foregoing, including the public, may include, among other things, the name of the Grantee; the name, location, and description of the Project; the date and amount of financial assistance awarded by the Department; the terms of the financial assistance; use of funds; information contained in the application for financial assistance; a copy of the Application; and the sources, amounts and terms of other funding used to complete the Project, including Matching Fund contributions from the Grantee.

**12.12 Term**

This Agreement shall remain in effect until one of the following events has occurred:

- (a) The Grantee and MCA replace this Agreement with another written agreement;
- (b) All of the Grantee's obligations under this Agreement have been discharged, including the provision of service for the minimum five-year period; or
- (c) This Agreement has been terminated pursuant to the provisions of Section 9 hereof.



## MAINE CONNECTIVITY AUTHORITY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date of this Agreement.

Winterport

Signature: Maureen Black  
Maureen Black (Jan 17, 2023 11:48 EST)

Email: winterportme@roadrunner.com

\_\_\_\_\_  
by its: Acting Town Manager, Maureen Black

Frankfort

Signature:

Email: clerk@frankfortme.com

\_\_\_\_\_  
by its: Town Clerk, Heather McLaughlin

Stockton Springs

Signature:

Email: manager@stocktonsprings.org

\_\_\_\_\_  
by its: Town Manager, Mac Smith

MAINE CONNECTIVITY AUTHORITY

\_\_\_\_\_  
by: its Chief Financial Officer, David Wedick

## MAINE CONNECTIVITY AUTHORITY

### SCHEDULE 1

Section 2.1 Maximum MCA Grant Amount: \$ 30000  
Grantee Matching Funds Amount: \$0

Section 2.3 Start Date for Eligible Expenses: December 1, 2022  
End Date for Eligible Expenses: June 30, 2023  
Grant Expiration Date: September 30, 2026

Section 2.6 Performance Requirements. Grantee will ensure that all Project planning activities will work towards developing broadband projects that can meet the desired minimum network performance requirements of 100 Mbps upload and 100 Mbps download speeds, without usage limits, following completion of the Project. If the planning activities conclude that those requirements are impractical, Grantee will provide a detailed rationale to MCA for that determination and identify an alternative practical performance requirement with a plan for eventual scale-up of the Project to the 100/100 Mbps requirement.

Section 5.2(b) Grant Advance Schedule:

Date	Advance Amount	Type
Contract Closing	100% of Year 1 Grant [\$10,000.00]	MCA disbursement on advance basis based

Section 5.2(g) Additional Conditions:

Section 6.6. *Principal Place of Business.* The principal place of business and chief executive office of the Grantee is:

44 Main St

Winterport, Maine 4496

207-299-4975

Section 7.8 Grantee Unique Entity Identifier 01-6000445

Section 8: Additional Negative Covenants:

## **MAINE CONNECTIVITY AUTHORITY**

### **ADDITIONAL EXHIBITS AND SCHEDULES:**

**Exhibit A - Infrastructure Project and Scope of Work**

**Exhibit B - Project Map**

**Exhibit C - Project Budget**

**Exhibit D - Matching Funds Source**

**Exhibit E - Certifications**

- Debarment and Suspension Certification**

- Federal Funding Acknowledgment and Certification Regarding Use of Federal Funds for Lobbying**

**Exhibit F - Project Reporting Requirements**

**Exhibit G - State and Local Fiscal Recovery Fund Program Requirements**

## **MAINE CONNECTIVITY AUTHORITY**

### **EXHIBIT A**

#### **Scope of Work**

**Provide local engagement efforts for the following towns:**

- **Winterport, Stockton Springs, Frankfort**

# MAINE CONNECTIVITY AUTHORITY

## EXHIBIT E

### Certification Regarding Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions

This Certification is required by the Regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The Regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b of this Certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Full Name of Entity Making this Certification

Signature: Maureen Black  
Maureen Black (Jan 17, 2023 11:48 EST)

By: Email: winterportme@roadrunner.com

Authorized Signature for Entity  
Printed Name and Title

\_\_\_\_\_  
Date

Signature:

Email: clerk@frankfortme.com

Signature:

Email: manager@stocktonsprings.org

## MAINE CONNECTIVITY AUTHORITY

### EXHIBIT F

#### PROJECT REPORTING REQUIREMENTS

F-1. Grantee shall comply with the following reporting requirements, using forms supplied by MCA and MCA reporting procedures. Grantee acknowledges that MCA must report on this Grant Agreement Project to the Treasury, and must rely upon Grantee's information.

F-2. Grantee must use the electronic report format provided by MCA for reporting of data. After review, MCA may request clarifications or revisions by Grantee to enable adequate MCA Project oversight and MCA reporting to Treasury.

F-3. Grantee must file quarterly, annual, and final reports as required by Treasury Guidance, summarized below and described in detail in the Guidance:

- (a) *Quarterly Project Project and Expenditure Reports.* By January 15, April 15, July 15, and October 15 of each year during the term of this Agreement, Grantee shall provide the Office with quarterly interim progress reports in a manner and form to be determined by MCA. The interim progress reports shall contain such information as MCA may reasonably require, including, but not limited to:
  - 1. Work accomplished and problems encountered
  - 2. Past and projected expenditures made against the Project Budget
  - 3. Milestones reached to date based on the community-driven broadband process
  - 4. Engagement & reach: Number of informational meetings held and number of attendees at meetings
  - 5. Community survey results
  - 6. Digital Equity: Community anchor institution relationships established, additional digital literacy engagement or services provided to community, touch points with Regional Broadband Partner
  - 7. MBC Speedtest updates; and
  - 8. Stories - collaboration with MCA to provide input for MCA storytelling - as relevant/requested by MCA
- (b) *Annual Project Performance Activity Report.* No later than January 15th of the following year in which all or any portion of the Grant is first advanced and continuing in subsequent years until completion of the

## MAINE CONNECTIVITY AUTHORITY

Project, the Grantee must submit the following information utilizing MCA's online reporting system:

- (i) a comparison of actual accomplishments to the objectives established for the period;
  - (ii) a description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall Project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular Project work elements during established time periods, accompanied by a statement of action taken or planned to resolve the situation;
  - (iii) objectives and timetables established for the next reporting period; and
  - (iv) a completed SF 425- Federal Financial Report.
- (c) *Final Project Performance Activity Report.* No later than ninety (90) days after the Project completion, the Grant Expiration Date, or the termination of the Grant under this Agreement, whichever event occurs last, the Grantee must submit a report that only covers an evaluation of the success of the Project in meeting the objectives of the program.

### F-4. *Additional Post-Project Completion Reporting Requirements*

- (a) *Annual Performance Report.* For five years starting the first January 15th after Project Completion, Grantee must submit an annual post-project assessment utilizing MCA's online reporting system and providing an update on the impact of planning activities on broadband improvements, providing information requested by MCA.
- (b) *Annual Map Reporting:* No later than thirty (30) calendar days after the end of the Calendar Year, Grantee shall be required to submit annually updated Approved Project Service Area(s) maps through an online mapping tool designated by MCA showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.

# **MAINE CONNECTIVITY AUTHORITY**

## **EXHIBIT G**

### **STATE AND LOCAL FISCAL RECOVERY FUND PROGRAM REQUIREMENTS**

**The Treasury State and Local Fiscal Recovery Fund Program Requirements include the following specific restrictions on use of SLFRF grant funds:**

**G-1. Broadband Infrastructure Requirements.** Pursuant to the SLFRF requirements, the Project must, upon completion and for the following five-year period, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, unless Grantee demonstration that those speeds are impracticable because of geography, topography, or excessive cost, and MCA has approved the proposed alternate design speeds consistent with Treasury Guidelines.

**G.2. Affordability Requirements.** Pursuant to the Guidance requirements, for the five-year period following Project completion, Grantee must either:

(a) Participate in the Federal Communications Commission's (FCC) Federal Communications Commission's Affordable Connectivity Program (ACP) or any subsequent program identified by Treasury; or

(b) Provide access to at least one low-cost option offered at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning.

**G.3. Uniform Administrative Regulations, 2 CFR Part 200.** Grantee shall comply with all applicable requirements of 2 CFR Part 200, including but not limited to, the provisions of Part 200 Appendix II, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards" as amended from time to time.

**G.4. Debarment and Suspension (Executive Orders 12549 and 12689) -** A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**G.5 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) -** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Grantee and all subcontractors paid more than \$100,000 must file the required certification attached as Exhibit E.

**G.6. Domestic Preferences for Procurement.** Grantee and subcontractors shall, to the greatest extent practicable under a Federal award, provide preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all



## MAINE CONNECTIVITY AUTHORITY

subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

G.7. Uniform Administrative Requirements, Cost Principles, and Requirements for Federal Awards (2 CFR Part 200).

(a) Grant funds provided under this Agreement shall only be used towards allowable costs, as defined in 2 CFR 200.

(b) Grantee shall comply with all applicable State and federal accounting laws, rules, and regulations. Grantee shall establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the Grantee, and shall conform to the requirements of this Agreement.

(c) MCA, the Maine State Auditor, the U.S. Government Accountability Office, the U.S. Treasury's Office of Inspector General (OIG), through their representatives, shall have the right to monitor all work performed under this Agreement to assure that all applicable state, and federal regulations are met. MCA and Treasury, State of Maine, and federal governments shall have the right to audit all work, records, and procedures related to this Agreement to determine the extent to which the program is achieving its purposes and performance goals. MCA will have the right to review financial and programmatic reports and will notify Grantee of any potential federal and/or state exception(s) discovered during such examination.

## MAINE CONNECTIVITY AUTHORITY

From: "Joshua Wellman" <jwellman57@gmail.com>  
To: winterportme@roadrunner.com  
Cc:  
Bcc:  
Priority: Normal  
Date: Friday January 13 2023 11:44:48AM  
Recycling Container

---

Hi Maureen,

I took another look at the recycling container and I feel it is too far gone at this point to rebuild. The container isn't worth putting a substantial amount of money into it because the main rails and cross members are gone. I would have around \$10,000 in materials and labor just to do main rails and cross members and some new 1/8" sheathing on the floor.

If we have some old compactor containers that are not road worthy I will let you know that could be purchased at a discount to be used as the town's recycling container.


In the meantime we will try to keep the old recycling container going. I hope this helps.

Sincerely,

Josh Wellman

**DM&J Waste Management, Inc**  
**d/b/a DM&J Waste**  
**d/b/a Ellsworth Waste Services**  
**219 Stream Road**  
**Winterport, ME 04496**

Direct Line/Cellular: (207) 949-2162  
Transfer Station Office: (207) 223-4112  
Transfer Station Fax: (207) 223-5411

uc?  
export=download.

This e-mail is intended for the sole use of the addressee and may contain confidential information. If you are not the intended recipient, any use of this email is strictly prohibited. If you have received this e-mail by mistake please notify me immediately and permanently delete this email. Thank you.

## **DEBT SERVICE ASSUMPTION AGREEMENT**

**Between**

**THE TOWN OF WINTERPORT, MAINE and**

**THE WINTERPORT WATER DISTRICT**

This **DEBT SERVICE ASSUMPTION AGREEMENT** (the “Agreement,”) by and between the Town of Winterport, Maine, a body corporate and politic duly organized and existing under the laws of the State of Maine (the “Town”) and the Winterport Water District, a body corporate and politic duly organized and existing under the provisions of the laws of the State of Maine (the “District”) (together, the “Parties”).

**WHEREAS**, the District has authorized the issuance of debt of the District in a cumulative principal amount not to exceed \$1,940,990 to finance improvements to the District’s wastewater treatment plant (the “Project”), via the issuance of a \$1,500,000 Revenue Obligation Bond of the District to the United States Department of Agriculture, acting through its Rural Utilities Service (the “RUS Bond”) and a \$440,990 Clean Water State Revolving Fund Revenue Obligation Bond (the “SRF Bond,” and, with the RUS Bond and any temporary Bond Anticipation Notes issued to finance construction in anticipation of and to be redeemed with the proceeds of the RUS Bond and/or the SRF Bond, the “Bonds”), including all applicable interest and

**WHEREAS**, the Town, by vote at a Town Meeting duly noticed, called and held on June 10, 2021, the residents of the Town authorized the extension of the Town’s credit in an amount not to exceed \$1,940,990 for the purpose of paying or guaranteeing the payment of the Bonds, and

**WHEREAS**, the Town Council of the Town authorized the Town Treasurer to enter into this Debt Service Assumption Agreement to memorialize the terms and conditions under which the Town will assume the obligation to make payments to the District equal to the amount of the debt service due from the District with respect to the Bonds,

**NOW THEREFORE**, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth the Town and the District, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

### **Section 1. Assumption and Terms**

(a) **Assumption.** The Town hereby agrees to pay to the District, or to cause to be paid to the lenders due payment under the Bonds on behalf of the District, subject to the terms and

conditions hereof, an amount equal to the amount of principal and interest due and payable from the District on the Bonds from time to time.

(b) **Notice and documentation.** No payment under Section 1(a) hereof shall be due unless and until the District provides the Town with a copy of a debt payment schedule or similar instrument establishing the amount and due date of any such payment, at least two weeks prior to the date upon which the District is required to advance the payment to its creditor. The provisions of this Section 1(b) shall be deemed met if the District provides the Town with a schedule of payments showing the due dates and amounts of all payments due under the Bonds.

(c) **Failure to Pay.** Notwithstanding any other provision of this Agreement, should the Town fail to make a payment due to the District under the terms of this Agreement, the District may make the payment directly to the creditor to whom payment is owed and send the Town an invoice for payment in that amount, which shall become immediately due and payable by the Town to the District.

(d) **Offset.** To the extent that the District secures funding or sources of repayment dedicated to the reduction or reimbursement of Project costs or the redemption of any portion of the Bonds, and which are received outside the ordinary course of its business, or to the extent the District actually applies funds to reduce Project costs, to reimburse Project expenses, or to redeem all or any portion of the Bonds, the District covenants to so apply such funds, and the obligations of the Town hereunder to the repayment of principal on the Bonds shall be reduced by the same amount.

## **Section 2. Representations and Warranties of the District**

The District hereby represents and warrants that:

- (a) It is a body corporate and politic, duly organized and existing under the laws of the State of Maine (the "State") and it has full legal right, power and authority to conduct its business, own its properties, issue debt, and enter into this Agreement.
- (b) The issuance of the Bonds has been duly authorized, and the Bonds constitute legal, valid and binding obligations of the District.
- (c) The District has secured all licenses, permits and approvals necessary for the construction of the Project, and owns the facilities, equipment, fixtures and other materials constructed in connection with the Project, and will use such facilities, equipment, fixtures and other materials consistent with their purposes.
- (d) The execution and delivery of this Agreement will not violate any indenture, mortgage, deed of trust, loan agreement, note, debt limit or other contract, instrument or legal requirement to which the District is a party or by which it is bound, or, to the best of the

existence of the Town, or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution of any of the Bonds, or (iii) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby.

#### **Section 4. Miscellaneous Provisions**

- (a) In the event that any Party to this Agreement defaults in the performance of the covenants or agreements set forth in this Agreement, or in any other proceeding or contract executed by that Party in connection with the execution or issuance of the Bonds, the other Party shall have all rights and remedies permitted by law and equity.
- (b) No failure or delay on the part of any Party to this Agreement in enforcing any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercises thereof or the exercise of any other right, power or remedy hereunder.
- (c) No modifications or waivers of this Agreement shall be effective unless the same shall be in writing and signed and duly authorized by each Party.
- (d) All notices, consents, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given to a Party hereto if mailed by certified mail to the District or the Town at their respective mailing addresses, or at such other addresses as any Party may have designated in writing.
- (e) All agreements, representations and warranties made by the Parties herein or made by the District in connection with the issuance of the Bonds shall survive the delivery of this Agreement, and shall continue in full force and effect for so long as any of the Bonds remains outstanding.
- (f) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (g) This Agreement shall be deemed a contract made under the laws of the State of Maine and shall be governed by and construed in accordance with the laws of the State of Maine.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the Parties hereto have each caused this Debt Service Assumption Agreement to be duly executed as of this \_\_\_\_ day of January, 2023.

**Town of Winterport, Maine**

By: \_\_\_\_\_

Its Town Manager

**Winterport Water District**

By: \_\_\_\_\_

Its Treasurer

By: \_\_\_\_\_

Its Board Chair

State of Maine

\_\_\_\_\_ County \_\_\_\_\_, 2022

Personally, appeared the above-named \_\_\_\_\_, in his/her capacity, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said corporation.

\_\_\_\_\_

Notary Public/Attorney at Law

\_\_\_\_\_

Print or type name as signed

My commission expires: \_\_\_\_\_

STATE OF MAINE  
COUNTY OF WALDO  
COURT OF COUNTY COMMISSIONERS



District

1 Betty I. Johnson (207) 323-3767  
2 William D. Shorey (207) 548-6114  
3 Amy R. Fowler (207) 322-4556

Barbara L. Arseneau  
County Clerk

39-B Spring Street  
Belfast, ME 04915

Phone (207) 338-3282  
Fax (207) 338-6788  
E-mail: [countyclerk@waldocountyme.gov](mailto:countyclerk@waldocountyme.gov)

Patricia Parker  
Finance Director

**AGENDA:** Waldo County Commissioners Court Session  
**DATE:** Thursday, January 19, 2023 @ 9:00 a.m.  
**LOCATION:** Commissioners Courtroom, 39B Spring Street, Belfast  
**REMOTE TELECONFERENCE (Zoom):** Go to [waldocountyme.gov](https://waldocountyme.gov) for details  
*(Agenda is subject to change and may run ahead or behind schedule.)*

**WARRANTS/VOUCHERS & FINANCE REPORT** – January 5, 2023 Regular, Reserve and Corrections Reentry Regular Warrants

**NEW BUSINESS** – Solar Energy Contract, Information Technology Report, Correspondence & Approval of Minutes, Public Comment, Commissioners Miscellaneous Business, Executive Session – Discussion of Duties (MRSA Title 15405,6.A.

**OLD BUSINESS** –

Times highlighted in yellow are those participating by Zoom.

TIME	NAME	REGARDING
9:00 A.M.	Finance Director Trish Parker	January 5, 2023 Regular, Reserve and Corrections Reentry Regular Warrant
9:10 A.M.	EMA Director Dale Rowley	Swanville/Solar Update
9:30 A.M.	Facilities Manager Keith Nealley & Andrew Karhl (Revision Energy)	Solar Energy Contract
9:45 A.M.	IT Director J-sun Bailey	Information Technology Report
9:55 A.M.	County Clerk Barbara Arseneau	Correspondence & Approval of Minutes
10:00 A.M.	Public Comment	
10:00 A.M.	County Commissioners	Miscellaneous Business
10:15 A.M.	Executive Session	Discussion of Duties – MRSA Title 15405,6.A.
10:30 A.M.	Adjournment	



## Chapter 5 - Interaction with Other Municipal Officials, Boards and Committees

The municipal officers, school committee members (under most circumstances), and the town moderator are the only officials who by statute must be elected (*30-A M.R.S.A. § 2525*). The town clerk, tax collector, treasurer, assessor(s), road commissioner, fire chief, planning board/appeals board members, and other board or committee members (such as for the recreation, conservation, or budget committees, if any) may be either appointed or elected according to provisions in a local charter or ordinance. Where municipal officials such as the town clerk, tax collector, treasurer, assessors and road commissioner are elected, the municipal officers have little control over the performance of work and hours of business; control must be exercised by the body that elected the officials—the town meeting—by attaching conditions of office in the article that establishes the election of the official. The town manager, the administrative assistant, the code enforcement officer (CEO), the local plumbing inspector (LPI), the health officer, the animal control officer, the constable/police officers and the building inspector are officials who must be appointed by the municipal officers (unless the town is under a town manager plan). Except as otherwise provided by charter or ordinance (or by charter only, for the office of school committee), when a vacancy exists in a municipal office other than the offices of selectpersons and the school committee, the municipal officers may appoint a person to fill that vacancy. *30-A M.R.S.A. § 2602(2)*.

### Municipal Managers: Town Manager and Administrative Assistant

#### Town Manager

In those towns that have elected to operate under a select board-town manager form of government, the municipal officers' responsibility to exercise certain administrative and executive powers of the municipality is delegated to an appointed manager. Under this system, the municipal officers remain the executive body but they exercise their administrative duties through the town manager.

If the municipal charter does not contain specific authority to operate under a select board-manager system and the municipality has not adopted a "Town Manager Plan" under statutory authority (*30-A M.R.S.A. § 2631, et seq.*), then the municipality may not use the manager form of government. These requirements are intended to ensure that the responsibilities of the municipal officers and those of the manager are specially designated before the manager's appointment.

Although in all cases the manager remains accountable to the municipal officers, she is given broad responsibilities, such as:

- the appointment of all department heads and, through them, all municipal employees;
- the preparation of the municipal budget for approval at town meeting;
- the administration of that budget once adopted;
- the coordination of all administrative duties, including those which are not performed directly by the manager;
- the regulation of departmental spending; the development and execution of an administrative plan for governmental activity; and
- the duties belonging to any other municipal office to which the manager has specifically been appointed and separately sworn by the municipal officers.

Title 30-A M.R.S.A. § 2636 lists the duties of the manager, some of which are subject to modification or clarification by charter or ordinance. For example:

- under § 2636(4), the manager is to serve as the head of any department when so directed by the municipal officers;
- under § 2636(5), the manager is to appoint, supervise and control the heads of departments which the manager does not head;
- under § 2636(6), the manager is to appoint, supervise and control all other municipal officials whom the municipal officers are required by statute to appoint, except boards and commissions, or unless otherwise provided by municipal ordinance; and
- under § 2631, a municipality may determine whether other municipal officials will remain elected under the municipality's manager plan, including: assessors, tax collector, road commissioner, overseers of the poor, clerk, and treasurer.

In other words, a municipality has some flexibility in determining which offices will be combined under the town manager, which departments will be headed by the town manager, which departments will have a separate department responsible to the manager, and which offices will remain elected, as allowed by certain statutes. Furthermore, it is the municipal officers and not the manager who appoint commissions, boards or committees. In addition, the position of single assessor, if the municipality has just a single assessor, also is filled by the municipal officers' appointment.

Despite this flexibility, the municipal officers are bound to certain procedures when the town has a manager. For example, 30-A M.R.S.A. § 2635 prohibits the municipal officers from giving orders to any subordinates of the manager (including all municipal employees) either publicly or privately. Section 2636(14) also gives the manager "exclusive authority to remove for cause, after notice and hearing, all persons whom the manager is authorized to appoint...." (See discussion in Chapter 9 on "The Town Manager Dilemma.")

The municipal officers set the compensation for the manager (30-A M.R.S.A. § 2633(2)). The procedure for suspension or removal of a manager is set forth in 30-A M.R.S.A. § 2633(3). The manager's term of office is indefinite unless otherwise specified by contract (30-A M.R.S.A. § 2633 (1)).

It is clear that the purpose of Maine law governing the position of town manager is to reduce the chance for confusion in the area of municipal leadership. In practice, however, the clear distinction between policy formation or interpretation and policy administration is less precise than it appears on paper.

It is not unusual for some confusion or conflict to arise between municipal officers and the manager as they try to carry out their respective duties. In such cases, it is important that the language be clarified in the charter or town manager plan, and the amended plan taken to town voters for adoption. The more closely defined the manager's job duties, the less likelihood there is for the municipal officers and the manager to find themselves at cross purposes. See "Building Better Board/Manager Relations," *Maine Townsman*, June 2008.

See MMA's "Town Manager Plan" Information Packet for additional information.

### **Administrative Assistant/Town Administrator**

The difference between an administrative assistant or town administrator and a town manager is not so much in the duties that each performs, but in the source and degree of authority associated with each position. Like a town manager, an administrative assistant or town administrator performs administrative and managerial duties. Unlike the town manager, however, the administrative assistant or town administrator assists the municipal officers rather than assumes some of their administrative duties.

Typically, the administrative assistant or town administrator is appointed to serve at the discretion of the municipal officers, and the assistant's duties are prescribed by the municipal officers either informally (on a day-to-day basis) or formally (by job description) or both. The job description of the administrative assistant or town administrator can be set down formally in an ordinance or charter provision by town meeting vote, which would be controlling. It would be prudent for a town to create such a definition, since unlike the town manager plan statute, there is no State law that defines the powers and duties of an "administrative assistant" or "town administrator," or that even mentions such a position.

Because an administrative assistant's or town administrator's job description varies so much from municipality to municipality, it is impossible to describe the duties here with any uniformity. Typically, an administrative assistant or town administrator may:

- perform clerical duties for the board of municipal officers, such as writing letters, taking minutes, fielding telephone calls, filing forms, maintaining records, and so forth;
- be appointed and sworn to one or more offices, such as tax collector, General Assistance administrator, treasurer, community development or finance director; and
- perform any other specific duties as directed by the municipal officers.

## **Financial Officers: Tax Collectors/Treasurers/Assessors**

### **Property Tax Collector**

The municipal property tax collector is elected or appointed to collect all property taxes assessed by the assessors against all real estate and personal property. The powers and duties of the collector are described in 36 M.R.S.A. § 751-766. A municipality may have more than one collector (for different years).

The tax collector is specifically prohibited from holding simultaneous office as a municipal officer or assessor and therefore has no authority to adjust or abate a tax or collect a tax where none was assessed. Furthermore, the tax collector must furnish a performance bond running to the inhabitants of the municipality. It is recommended that the amount of the bond be for at least 10-15% of the total commitment plus cash on hand at the beginning of the fiscal year. The same person may serve as tax collector and as treasurer (*30-A M.R.S.A. § 2526(8)(A)*).

The term of office for the tax collector is one year, unless a town vote, local ordinance or charter provision establishes a longer term. However, although a tax collector is elected or appointed for a specific term of office, the tax collector's duties and authority extend beyond that term. The property tax collector's office is unique in that the collector's authority stems in part from the tax commitment given to the collector by the assessors. The commitment is a personal obligation and imposes a duty upon the collector to complete all of the collections covered by it or be held personally liable for the money not collected. The collector cannot "walk away" from these obligations at the expiration of the term for which he or she was elected or appointed. A collector who wants to be relieved of these duties must convince the municipal officers to accept his or her resignation, to sign a settlement and discharge determining what if any balance on the commitment remains, and then to recommit that balance to a willing new collector. Sample settlement and recommitment forms are found at Maine Revenue Services' website under the Property Tax Division heading.

A property tax collector is authorized by 30-A M.R.S.A. § 2603 to appoint one or more deputies in writing. If the collector fails to do this and is absent, the municipal officers have the authority to appoint a deputy to serve during the collector's absence. The deputy's term is

concurrent with the collector's; when the collector leaves office for whatever reason, the deputy's authority ends.

Title 36 M.R.S.A. § 759 requires the collector to deposit all property and excise tax receipts with the town treasurer at least on a monthly basis and also requires an accounting to the municipal officers at least every two months. This is a very important check and balance system which the municipal officers must take seriously and carefully monitor in order to avoid possible misappropriation of funds.

### **Excise Tax Collector**

In addition to collecting property taxes, the tax collector often is charged with the duties of excise tax collector, although the responsibility of collecting excise taxes could be given to a separate municipal official (*36 M.R.S.A. § 1487*). Excise taxes are collected for vehicle or boat registration for the privilege of operating vehicles or boats on the public ways or water bodies of the State. Title 36 M.R.S.A. § 759 also requires monthly deposits of excise tax money with the town treasurer and accounting to the municipal officers of all excise taxes collected by the collector at least every two months. In addition, 36 M.R.S.A. § 1487(1) requires the excise tax collector to report to the municipal officers at the end of each municipal fiscal year: (1) the total amount of excise taxes collected, and (2) the amounts that apply to each year. Any fees collected by an excise tax collector who is serving as a motor vehicle registration agent for the State are municipal revenues and also must be deposited with the treasurer. If the legislative body has voted to give these fees to the excise tax collector as part of his compensation, then the fees will be disbursed on a warrant approved by the municipal officers to authorize the treasurer to write a check. If the excise tax collector is going to serve as the registration agent for another town as well as his own, this should be approved by the State Bureau of Motor Vehicles and probably also by the municipal officers of both towns (*29-A M.R.S.A. § 201*). Additional discussion of the duties of the tax collector and excise tax collector can be found in MMA's *Tax Collectors and Treasurers Manual*.

### **Treasurer**

The statutory guidelines for the office of treasurer are found in 30-A M.R.S.A. §§ 5601-5604. The general duties of the treasurer are to receive and record all revenues due the municipality and to make necessary disbursements only upon authorization of the municipal officers. Although the treasurer certainly is an important and primary advisor to the municipal officers with regard to financial matters, the treasurer is prohibited from acting in an unauthorized or unilateral way, such as by choosing banking or lending institutions, making unauthorized disbursements of any kind, setting financial policy, or initiating loans. The treasurer may disburse money only on a warrant for that purpose, approved by the municipal officers by majority vote at a public meeting and signed by a majority of them. Title 30-A M.R.S.A.

§ 5603 provides several exceptions to this rule for payroll warrants and school disbursement warrants where the board has approved a policy delegating signing power to less than a majority; § 5603 also authorizes a home rule ordinance authorizing less than a majority to sign other kinds of disbursement warrants. See Appendix 8 for sample language for such a delegation and for an ordinance covering other disbursements.

The treasurer is responsible for keeping the municipality's financial accounts in accordance with generally accepted principles of municipal accounting. The treasurer is instrumental in presenting clear financial information to the municipality's voters, primarily through the town report, and to the municipal officers so that the board can make informed decisions, particularly with regard to municipal borrowing and investment. The treasurer also is responsible for accepting tax warrants from the State and county governments and making sure they are promptly paid.

The treasurer can be either elected or appointed and cannot simultaneously serve as a municipal officer or assessor. 30-A M.R.S.A. § 2526(8)(A). Like the tax collector, the treasurer must be bonded. The recommended amount of the bond is 10-15% of the total amount that is handled by the treasurer on an annual basis, although a bond for a higher amount might be appropriate if the municipality has substantial surplus or reserve funds. The term of office is one year unless a town meeting vote, local ordinance or charter provision prescribes a longer term. It is permissible and not uncommon for the tax collector and the treasurer to be the same individual. A complete description of the treasurer's duties can be found in MMA's *Tax Collectors and Treasurers Manual*.

As with the tax collector, the treasurer has the authority to appoint one or more deputies in writing. If the treasurer has failed to do so and is absent, the municipal officers may appoint a deputy to serve in the treasurer's absence. A deputy appointed by the treasurer serves a term concurrent with the treasurer; when the treasurer leaves office for whatever reason, the deputy's authority ends.

Title 30-A M.R.S.A. § 5603 requires the treasurer to make an accounting to the municipal officers at least every three months. This is part of a very important system of checks and balances which the municipal officers must take very seriously in order to avoid possible misappropriation of funds.

### **Application of Tax Payments by Tax Collector/Treasurer**

State law permits the municipal officers to adopt a policy to require property tax payments to be applied to the oldest outstanding tax, in order to avoid automatic foreclosure for nonpayment of property taxes to the greatest extent possible. (See 36 M.R.S.A. § 906: "The municipal officers of a municipality may, upon request of the municipal treasurer or the tax



collector, require that any tax payment received from an individual as payment for any property tax be applied against outstanding or delinquent taxes due on that property in chronological order beginning with the oldest unpaid tax bill. Taxes may not be applied to a period for which an abatement request or appeal has not been resolved unless approved in writing by the taxpayer.”) See the appendices to MMA’s *Tax Collectors and Treasurers Manual* for a “Section 906 order” that the municipal officers may adopt to require such application of tax payments.

## Assessors

A municipality may vote to have a board of three, five, or seven elected assessors or a single, State-certified assessor (36 M.R.S.A. § 327) appointed by the municipal officers (30-A M.R.S.A. § 2526(5)). If a municipality has not created a board of assessors or single assessor, the municipal officers shall be the assessors (36 M.R.S.A. § 703). Also, where a municipality has created a board of assessors but has not elected a full board, the municipal officers shall serve as the board of assessors (30-A M.R.S.A. § 2526(5)(C)). Historically, and in many of Maine’s municipalities today, the municipal officers also serve as the board of assessors.

For many boards of municipal officers who undertake the entire assessing function, the assessing chore is by far the most time-consuming task associated with being a municipal officer. It has become increasingly common in even the smallest towns to contract out the appraising work to a professional property value appraiser, commonly called an “assessors’ agent.” This almost always is done when it comes time for the municipality to perform a revaluation, and many municipalities continue with a professional appraiser for an annual maintenance service, particularly for new property valuations. It is important to remember that the professional land appraiser employed by the municipality for the purpose of appraising property values is not the municipality’s assessor unless the town has followed the statutory procedures to change from a board of assessors to a single assessor and the municipal officers have expressly appointed someone to that position (30-A M.R.S.A. § 2526). The private appraiser under contract only provides information to the assessors which they may or may not use in determining the actual assessment and levy of the property tax. For this reason, it is important for the municipal officers to understand the methods used by the appraiser if they are also the assessors.

As previously noted, the municipal officers (not in their capacity as assessors) have power under 36 M.R.S.A. § 841(1) and (2) to grant property tax abatements based on a legal or constitutional challenge to an assessment, poverty, or infirmity, or on the uncollectability of the tax after two years. For more information about the abatement proceedings, see MMA’s *Assessors Manual* and MMA’s “Poverty Tax Abatement” Information Packet.

A variety of other assessing issues are covered in detail in MMA's *Assessors Manual*, as well as in materials available from the Maine Revenue Services' Property Tax Division. See Appendix 5 for "Demystifying Assessing," *Maine Townsman*, February 1996, and other related materials.

## **Municipal Clerk**

The clerk has a variety of duties and cannot be neatly classified as either an administrator or financial officer. 30-A M.R.S.A. §§ 2651-2655 discuss the bonding requirement, a fee schedule, assistant clerks, and a prohibition on commingling funds. The other duties of a clerk are scattered throughout the statutes, and include care and maintenance of public records, issuance of certain licenses and permits, and election duties. These and other functions are discussed in detail in MMA's *Municipal Clerks Manual* and also in MMA's *Town Meeting and Election Manual*. In the absence of an ordinance or charter defining the clerk's duties, an elected clerk will be responsible only for the duties required by State law. An appointed clerk may have additional duties as prescribed by the municipal officers or other appointing authority.

The clerk may be elected, or may be appointed by the municipal officers or town manager if there is one. Elected clerks and the municipal officers sometimes disagree about office hours, particularly when the clerk works from his or her home. The office hours of an elected clerk can be set only by the voters or the clerk, even if the clerk's office is in the town hall. If the clerk and municipal officers cannot agree on office hours, the voters should be asked to fix the hours. The voters also may want to direct the town clerk to work at town hall rather than at home, since the town may be liable for injuries suffered by members of the public while going to and from and while at the clerk's home. (See *Rodriguez v. Town of Moose River*, 2007 ME 68, 922 A.2d 484, holding that the town clerk's home from which she conducted public business is a "public building" for purposes of the Maine Tort Claims Act.)

An elected clerk cannot be removed from office by the municipal officers, although an appointed clerk can be removed "for cause" after notice and hearing. Clerks are authorized by 30-A M.R.S.A. § 2654 to appoint one or more assistant clerks and may appoint one or more deputy clerks pursuant to 30-A M.R.S.A. § 2603. The clerk must pay an assistant or deputy unless the municipality has raised money for those positions.

The source of a clerk's compensation varies from municipality to municipality. Some clerks are paid solely from the fees they collect, others are salaried, and still others receive a combination of fees and salary. If the fees are to be part of the clerk's compensation, the legislative body must approve this. Even if the clerk is to be paid fees, the money must first



be deposited with the treasurer as municipal revenue and then paid out to the clerk on a disbursement warrant approved by the municipal officers.

## **Elected Commissioners/Boards**

### **Road Commissioner**

Both the municipal officers, generally, and the road commissioner, specifically, are responsible for ensuring that municipal ways and bridges “will be safe and convenient for travelers with motor vehicles” (23 M.R.S.A. §3651). There has been much confusion about who makes the final decision concerning roads because the road commissioner often is elected and cannot be removed or formally disciplined by the municipal officers. However, State law makes it clear that even in this situation the municipal officers have the final say. 23 M.R.S.A. § 2701 states:

In the absence of a statute, charter provision or ordinance to the contrary, any decision involving the duties and responsibilities of the road commissioner shall be made by a majority of the selectmen whose decision shall be final.

The road commissioner, therefore, while in charge of highway repair and maintenance within the municipality, must act according to the general policies or guidelines as determined by the municipal officers. Unless the municipality uses a very specific line-item budget, the municipal officers have the authority to decide how money will be spent regarding road work and road personnel. The road commissioner has no inherent authority to incur expenses or enter contracts for the municipality; this can only be done if authorized by the municipal officers.

The road commissioner’s duties include the administrative details of employment and employee supervision, scheduling, purchases, equipment maintenance, equipment operation, and road inspection, improvements and planning, etc., within the financial guidelines or road upkeep policies, if any, the board of municipal officers has developed (23 M.R.S.A. §§ 2701-2705).

Since the town may be liable for personal injuries and property damage if the roads are not properly maintained, the municipal officers should focus on good road practices, not politics, in deciding what work will be done. Often, the road commissioner is the most knowledgeable person in this regard so the municipal officers should take his or her advice into account. Likewise, the road commissioner may be a valuable source of technical knowledge if the municipal officers are reviewing bid responses for roadwork.

## **The School Committee**

Schools in Maine are governed by elected school boards which have certain duties prescribed by Title 20-A of the Maine statutes. Because school boards are elected, the voters are directly represented through their school boards and except for three areas (discussed below), school issues generally do not fall under the jurisdiction of the municipal officers.

There are several basic types of school administrative units: municipal school units, regional school units (RSU), school administrative districts that have not regionalized (SAD), community school districts that have not regionalized (CSD), alternative organizational structures (AOS) and the school union. The definition of each and the distinctions among them are set out in Title 20-A M.R.S.A. The Maine Legislature's School Administrative Reorganization Law changed the numbers and types of school administrative units in Maine, and this situation has evolved extensively since the Law's 2007 implementation and subsequent amendments. See "A Primer for School Reorganization," *Maine Townsman*, June 2007.

The municipal officers' role in school matters often is ministerial – that is, in such matters, they must act as directed by law and have no discretion. For example, the municipal officers have no discretion in the countersigning of a school district warrant for a referendum election on the closing of elementary schools, or in the countersigning of a district school budget validation referendum, or in the inclusion of a district's assessment for the municipality's share of annual school costs in the municipality's tax commitment. See "Court Orders Selectmen to Sign School Warrants," "Legal Notes," *Maine Townsman*, June 2009 and "School Warrant Order Affirmed by Law Court," "Legal Notes," *Maine Townsman*, March 2010 in Appendix 3.

The three areas in which the municipal officers generally are involved in school affairs are:

### ***Financial***

There is a financial link between the municipal officers and the school board, particularly with regard to municipal school units. For the RSU, SAD or the CSD, the municipality will be billed for the municipality's share of educational services in accordance with a budget approved by voters in the RSU region or CSD or SAD district and a formula established under Essential Programs and Services (EPS), under an existing cost-sharing agreement or in a reorganization plan. The municipal officers must authorize the treasurer to pay those bills through a disbursement warrant, just as it would handle any other municipal debt. With regard to the town meeting warrant calling a district budget meeting or referendum election, 20-A M.R.S.A. § 1352 requires the municipal officers to countersign the warrant, but they have no

authority to change or reject an election warrant prepared by the RSU, SAD or CSD for voters in the district; this is a nondiscretionary act.

For municipal school units (*20-A M.R.S.A. § 2301 et seq.*), the municipal officers must review and approve all school disbursements, just as they would review the warrant for other municipal expenditures, even though the school committee has already approved and signed them. As the municipality's chief executive officers, the municipal officers have the authority to question and refuse to authorize any municipal school disbursement which was not authorized by the town meeting (*20-A M.R.S.A. 15006 and 30-A M.R.S.A. § 5603*). Whether a specific expenditure is one they can refuse to pay will depend on the amount of detail in the school budget articles approved by the voters. Since most school budgets simply use the basic statutory articles, it generally would not be legal for the municipal officers to refuse to authorize a disbursement on the basis that the voters hadn't approved the expenditure. Generally, their focus is on whether the disbursement will cause an overdraft. The municipal officers could incur personal financial liability for a school overdraft, just as they could for an overdraft from a different budget line item (see Chapter 10 under "Liability for Ultra Vires Acts"). If the municipal officers no longer want to be involved in the approval of school disbursement warrants, they may approve a policy to that effect pursuant to *30-A M.R.S.A. § 5603*. See Appendix 8 for sample policy language.

### ***Municipal Services***

There also is interaction between the school committee (or its administrative staff) and the municipal officers concerning the use of municipal services. The physical operation of the school uses municipal services like solid waste disposal and fire protection in much the same way as any business in the community. Because the school usually transports a large number of children on a daily basis, schools also typically require some targeted municipal services, such as traffic control or special road plowing and maintenance. In return for any special demand for municipal services, school facilities are regularly made available for town functions. Indeed, the local school has all but replaced the town hall as the municipal meeting place. To coordinate this exchange of services, it is important to keep up good communication between the municipal officers and the school board.

### ***School Board Vacancies***

The third area in which the municipal officers may be involved is in filling vacancies on the school board. A vacancy on a municipal school committee is filled by appointment by the school committee within 30 days, or by election if the committee fails to act (*30-A M.R.S.A. § 2602(4) and 20-A M.R.S.A. § 2305(4)*). The municipal officers' role in that case would be limited to calling the town meeting for the election.

A vacancy on a RSU board is filled by municipal officer appointment until the next municipal election when a successor is elected (20-A M.R.S.A. § 1474). A vacancy on a SAD board of directors is filled by appointment until the next annual election by the municipal officers of the municipality in question (20-A M.R.S.A. § 1254(3)). A vacancy on the district committee of a CSD is filled according to 20-A M.R.S.A. § 1653, and a vacancy on the board of trustees is filled according to 20-A M.R.S.A. § 1651, unless the CSD was created by a private and special act which provides otherwise.

### ***School Policy Issues***

School policy issues clearly are beyond the scope of the municipal officers' involvement. Although it is not uncommon for a resident to take a school policy issue to the municipal officers for resolution, the municipal officers are not a local appeals board for school board decisions, and they should not allow themselves to be used as such.

### ***Budget Format and Funding Formula***

Effective FY 2008-2009, all school units have been required to use a uniform budget format that includes the 11 cost centers detailed in 20-A M.R.S.A. § 1485. The school board prepares the annual school budget, hopefully in collaboration with municipal officials, and with ample opportunity for public comment. Next, the budget goes to the legislative body of the school unit - an RSU budget meeting at which any voter may attend and propose changes to the budget or, in the case of a municipal school system, the Select Board or Council.

After consideration and approval, the budget goes to a budget validation referendum—that is, all voters in the municipalities making up the RSU or municipal school system vote to approve or reject the budget as presented. The ballot must be accompanied by a budget explanation document showing all 11 cost centers in the budget and, if applicable, the amount the budget exceeds the Essential Programs and Service allocation. If the budget fails at referendum, the school board takes it up again and the same process is repeated. See 20-A M.R.S.A. 1485-1487.

### **Water and Sewer Board of Trustees**

Both water districts and sewer districts fall under the definition of “quasi-municipal corporations” in 30-A M.R.S.A. § 2604. Water districts also are public utilities regulated by the Public Utilities Commission, and water district trustees must be elected pursuant to 35-A M.R.S.A. § 6401 *et seq.*, unless the Private and Special Law of the Legislature which created the district states otherwise.

Sewer districts are not regulated in the same manner, and sewer district trustees may be elected or appointed, depending on the terms of the district's articles of incorporation or Private and Special Law. In either case, the district trustees are directly responsible to the district users they represent with regard to policy issues within the scope of the district's authority.

The powers and duties of the trustees usually are set out in the articles or bylaws of the district. Many such districts were created by Private and Special Laws of the State Legislature, while others are established pursuant to the general statutes. It is important therefore to read the specific documents creating the specific water or sewer district.

The municipal officers have no special status with regard to the policy-making activities of a board of elected trustees. Even appointed trustees cannot be directly controlled by the municipal officers who appointed them, because appointees can only be removed by the municipal officers in midterm for cause, after notice and hearing (see below in this Chapter, under "Boards/Committees/Commissions"). As is the case with school committees, the municipal officers have every right and obligation to deal with the district trustees on issues related to the interests of the municipality as a whole, particularly with regard to the efficient coordination between the district's services and the municipal services.

Some sewer systems are owned and operated by a sanitary district created pursuant to 38 M.R.S.A. § 1061 *et seq.* The municipal officers generally have no direct involvement in district affairs, which are conducted by elected trustees. By statute, the municipal officers appoint someone to fill a vacancy on the board.

## **Election Officials**

### **The Moderator**

The moderator is the official elected by the town meeting itself to serve as chairperson at the town meeting. His or her term of office is for the duration of that town meeting and no longer. No matter how the town meeting votes for the election of all other municipal officers, the moderator is always elected by written ballot. 30-A M.R.S.A. § 2524 describes the process to elect the town meeting moderator, and establishes the moderator's broad powers to regulate the town meeting process.

The election of the moderator is the first article on a town meeting warrant, whether the warrant covers both a secret ballot election at the polling place and open town meeting business, only open town meeting business, or only a secret ballot election of officials and/or referendum questions. It usually is accomplished by means of "nominations from the floor" and voting by paper ballots.

Typically, the municipal officers make their nomination to the clerk, and it usually is only the municipal officers' votes that are necessary to elect the moderator. Sometimes, when the town meeting warrant contains some controversial articles, the person elected to be moderator becomes an issue itself, and voters may nominate and elect a moderator other than the person recommended by the municipal officers. When a moderator is elected before the polls open in a town holding secret ballot elections, if an open town meeting is called under the same warrant for the following day or some later date, the voters at the open town meeting will not be asked to elect a moderator unless the first moderator has resigned.

For more information about the moderator's duties, see MMA's *Maine Moderator's Manual* and MMA's *Town Meeting and Elections Manual*. The *Town Meeting and Elections Manual* also discusses when a municipal officer may serve as moderator.

### **Other Election Officials**

Under 21-A M.R.S.A. § 101, the municipal officers are required to appoint a registrar of voters (ROV), who also may be the clerk. The appointment must be made by January 1 of each odd-numbered year and is for a term of two years. If the clerk also is the registrar, the term of the clerk has no effect on the term of the registrar. The ROV's duties are described in 21-A M.R.S.A. § 121 *et seq.* and also in training materials available from the Secretary of State's Office. The ROV is appointed for a term of two years.

Title 21-A M.R.S.A. § 501 requires the appointment of an election warden to oversee State, county and federal elections. The warden has no role in municipal elections, unless by charter a municipality's elections are governed by Title 21-A rather than Title 30-A. In a town, the clerk appoints the warden with the approval of the municipal officers. The clerk may serve as warden or deputy warden. The municipal officers determine the warden's compensation.

The municipal officers appoint election clerks ("ballot clerks") for a term of two years to serve at all State, county and federal elections (21-A M.R.S.A. § 503). For town elections, 30-A M.R.S.A. § 2528(8) requires the municipal officers to appoint the "necessary number" of ballot clerks before the polls open. Usually the people appointed to serve as election clerks for other elections also serve for local elections. There must be a minimum of two, one from each of the major political parties. The people appointed usually are chosen from lists provided by the local party committees, but these lists are only advisory to the municipal officers; they may choose from the general lists of enrolled voters. The municipal officers determine reasonable compensation for the election clerks. A municipal officer should not be appointed as election clerk, as the two offices probably are incompatible. (See discussion of "incompatible offices" in Chapter 2.) An immediate family member of a candidate cannot be appointed as election clerk. 21-A M.R.S.A. § 504.

## Inspectors/Code Officers

A code is any legally enforceable law, rule, regulation, bylaw, ordinance, or charter adopted by the municipal, state or federal government. Depending on the size of the community and the extent of local regulation, a number of officials may enforce a code requirement. It also is possible for the municipal officers to appoint one individual to several enforcement offices, provided the separate offices filled simultaneously by one individual are not “incompatible.” For a discussion of incompatibility of office, see Chapter 2 under “Incompatibility of Office.”

The municipal officers or, if applicable, town manager, are required by law to appoint the following enforcement officials<sup>3</sup>:

- a code enforcement officer (CEO) for the purposes of administering aspects of the town’s shoreland zoning ordinance (*38 M.R.S.A. § 441*);
- a local plumbing inspector (LPI) (*30-A M.R.S.A. § 4221*);
- a building inspector, for towns with a population of 2,000 or more. *25 M.R.S.A. § 2351-A*);
- a health officer (*22 M.R.S.A. § 451*);
- constables or police officers may be appointed in accordance with 30-A M.R.S.A. §§ 2671 *et seq.*, if the town meeting has funded such positions; and
- a fire inspector must be annually elected unless the town has a municipal fire department, in which case the fire inspector is the fire chief (*25 M.R.S.A. § 2391*)).

In smaller communities, it is increasingly common to share a CEO or LPI or other enforcement official with neighboring municipalities. This is a good approach where one town alone cannot justify the cost of a full-time officer, and there is sufficient work for a shared position.

Municipalities may adopt local ordinance or charter provisions creating other enforcement positions not expressly created by statute; for example, a building inspector for towns with populations under 2,000 or an electrical inspector.

To the extent a number of these enforcement positions are going to be assumed by one individual, the appointing authority should be sure that:

- the position, the authority to enforce, and the codes to be enforced are clearly specified in local ordinance or charter.

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<sup>3</sup> Also see “Mandatory Municipal Officials” summary chart in Chapter 9.

- the appointee has the expertise required by law and common sense (for example, see “building inspector” below).
- the appointment would not put the individual in incompatible offices (see “Incompatibility of Office” in Chapter 2).
- the appointee takes an oath for each office to which he or she has been appointed.
- there is a deputy available—a deputy or assistant should be appointed or available to step in where the regular enforcement officer has a conflict of interest in a particular matter or is on vacation. The CEO in a neighboring town might agree to be appointed as a deputy or assistant. No deputy or assistant position exists by statute, so it must be specially authorized by an ordinance or article adopted by the voters. Likewise, the voters must raise money to pay the deputy or assistant.

The following is a brief summary of each of the above-mentioned municipal offices.

### **Code Enforcement Officer (CEO)**

The position of CEO is required by 38 M.R.S.A. § 441 in all communities which have a shoreland zoning ordinance. No vote of the town meeting is needed to create the position of shoreland zoning code enforcement officer. The municipal officers must annually appoint a CEO by July 1st for the purpose of shoreland zoning law and ordinance enforcement. The municipal officers may appoint the planning board to serve as a board of code enforcement officers for shoreland zoning purposes (*38 M.R.S.A. § 441 (1)*). However, the certification requirement for CEOs (discussed below) also applies to planning board members serving as a board of CEOs, so that trying to have the planning board wear both hats may discourage people from serving on the planning board.

Beyond the duties of shoreland zoning enforcement, a CEO may be authorized by ordinance or charter to enforce:

- a town zoning ordinance (*30-A M.R.S.A. § 4452(5)(G)*);
- state and local subdivision law or regulations (*30-A M.R.S.A. § 4452(5)(N)*);
- site plan review ordinance;
- the local floodplain development ordinance;
- junkyard and automobile graveyard licensing law (*30-A M.R.S.A. § 3751 et seq.*);
- miscellaneous nuisance law (*17 M.R.S.A. § 2802 et seq.*);
- the dangerous building statute (*17 M.R.S.A. §§ 2851-2859*);
- standards under a wind energy development certification issued by the Department of Environmental Protection (*30-A M.R.S.A. § 4452(5)(U)*);
- equal access laws for persons with disabilities (*5 M.R.S.A. § 4591 et seq.*, *25 M.R.S.A. § 2701 et seq.*); and



- any other legally enforceable codes falling under the CEO's jurisdiction by ordinance, charter provision or statute (*30-A M.R.S.A. § 4452*).

Title 38 M.R.S.A. § 441 lists a number of duties for a shoreland zoning CEO. Those duties include filing an activity report every two years with DEP's Land Quality Control Bureau by March 1.

All CEOs must be certified by the Office of Economic & Community Development (*30-A M.R.S.A. § 4451*). Although there is a provision in the law which allows for a waiver of this requirement (to be granted upon the demonstration that the delay will not cause the municipality a hardship, and lasting no more than 1 year), the act of employing a non-certified CEO could expose a municipality to civil litigation and a \$100 per-day fine. CEOs must be recertified every six years.

Upon Rule 80K certification and with express permission from the municipal officers, the CEO may represent the municipality in District Court to enforce the town's land use ordinances through the use of Rule 80K of the Maine Rules of Civil Procedure. More information regarding Rule 80K is found in a manual entitled "*Enforcement of Local Land Use Law Using District Court Civil Rule 80K*," available from the Office of Economic & Community Development. The CEO's duties, generally, are covered in depth in MMA's *Manual for Local Code Enforcement Officers*. That manual also includes a discussion of the use of "consent agreements" as a way to resolve code violations without court action and includes sample language.

### **Local Plumbing Inspector (LPI)**

The municipal officers must annually appoint a local plumbing inspector who is given the following duties by 30-A M.R.S.A. § 4221(3):

- Inspect all plumbing which requires permits, within their respective municipalities, to ensure compliance with State rules and municipal ordinances and investigate all construction or work covered by those rules and ordinances;
- Condemn and reject all work done or being done or material used or being used which does not comply with State rules and municipal ordinances, and order changes necessary to obtain compliance;
- Issue a certificate of approval for any work that the inspector has approved;
- Keep an accurate account of all fees collected and transfer those fees to the municipal treasurer;
- Keep a complete record of all essential transactions of the office;

- Investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate actions as specified by the Department of Health and Human Services in the “State of Maine Enforcement Manual, Procedures for Correcting Violations to the Subsurface Waste Water Disposal and Plumbing Rules;”
- Accompany DEP staff in the conduct of a sanitary survey to identify potentially failing subsurface waste water disposal systems affecting shellfish harvesting areas;
- Issue permits, when appropriate, before a seasonal dwelling can be converted to a year-round dwelling in the shoreland zone if the disposal system is located within the shoreland zone (*30-A M.R.S.A. § 4215*);
- Inspect shoreland zone subsurface systems, when requested by an owner who is going to sell, to determine if the system has malfunctioned within 180 days of transfer of that property (*30-A M.R.S.A. § 4216*);
- Submit an activity report by February 1 each year to the municipality and the Department of Health and Human Services; and
- Perform other duties as provided by municipal ordinance (*30-A M.R.S.A. § 4223*).

All LPIs must be certified by the Department of Economic & Community Development in order to hold office. With specific authorization from the municipal officials, certified LPIs may also represent the municipality in district court when the State Plumbing Code or any local ordinances which he or she has been authorized to enforce, if the LPI is also Rule 80K certified.

### **Building Inspectors**

The municipal officers are required by law to annually appoint a building inspector only if the municipality has more than 2,000 residents (*25 M.R.S.A. §2353-A*). Municipalities with 2,000 or fewer residents may establish this position by town meeting vote. The statutory qualification for a building inspector is that he or she is “skilled in the construction of buildings.” The building inspector’s duties are to:

- Issue building permits in accordance with the municipality’s ordinances, if any, regulating building construction, alteration, demolition or improvement;
- Inspect all new buildings under construction or in the process of being repaired “to see that all proper safeguards against the catching or spreading of fires are used, that the chimneys and flues are made safe and that the proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread” (*25 M.R.S.A. §§ 2353-A, 2354*);
- Issue occupancy permits to allow the occupancy of new buildings provided such buildings conform to the fire safety standards noted above (*25 M.R.S.A. § 2357-A*);

- Withhold building permits from proposed construction requiring an overboard discharge license from the Maine Board of Environmental Protection until such license is furnished (*38 M.R.S.A. § 413*);
- Withhold building permits for proposed construction in unapproved subdivisions (*30-A M.R.S.A. § 4103 and 30-A M.R.S.A. § 4406(1)(C)*);
- Withhold permits for the construction or opening (occupancy) of a public building if the plans or construction are not in compliance with the provisions of *25 M.R.S.A. § 2701 et seq.* relative to accessibility of the physically disabled; and
- Other duties as expressly provided by ordinance or statute, including the discretionary authority, but not the duty, to enforce the State's Life Safety Code 101 and other fire codes adopted by the Department of Public Safety (*25 M.R.S.A. § 2360*).

## **Fire Inspector**

When a town has an organized fire department, the department chief is designated by law as the fire inspector. If there is no fire department, the town must annually elect an inspector. In the case of a vacancy, for whatever reason, the municipal officers must appoint an inspector to serve until the next election of municipal officers. The duties and powers of a fire inspector are discussed in *25 M.R.S.A. §§ 2391-2395 and §§ 2400-2401*.

The fire inspector acts as the designee of the State Fire Marshal and is given the discretionary authority to discover and prosecute violations of State fire laws. This includes:

- municipal inspection of buildings (*25 M.R.S.A. §§ 2351-A - 2361*);
- regulations of the Commissioner of Public Safety pertaining to explosives, fire alarms, fire escapes, exits, etc. (Life Safety Code No. 101) (*25 M.R.S.A. § 2396*);
- insulation standards, public building construction, exits, sprinklers and smoke detectors, chimney, fireplace and wood stove installation, etc. (*25 M.R.S.A. §§ 2447-2465*);
- inspection of residential care facilities (*22 M.R.S.A. § 7851 et seq.*);
- inspection of day care facilities and nursery schools (*22 M.R.S.A. §§ 8304-A, 8403*); and
- any other responsibilities prescribed by local ordinance or charter.

## **Health Officer**

The health officer is appointed by the municipal officers for a three-year term. The general duties of the health officer are to assist the Department of Health and Human Services (DHHS) in the reporting, prevention and suppression of diseases and all conditions dangerous to health.

The health officer is subject to the supervision and direction of the DHHS and the municipal officers. 22 M.R.S.A. § 451 *et seq.* set forth the general rights and duties of this office.

Some of the health officer's specific duties are:

- to keep an accurate record "in a book for that purpose" of all proceedings, actions and transactions performed as health officer;
- to report to the DHHS facts which relate to communicable diseases occurring in the municipality;
- to receive and evaluate complaints concerning nuisances posing a potential public health threat;
- to inspect premises, with owner consent or court-ordered warrant, where "conditions posing a public health threat are known or believed to exist";
- to order the suppression or removal of any conditions posing a threat to the public health, after inspection and consultation with the DHHS;
- to order removal of sources of filth under 22 M.R.S.A. §1561; and
- to perform any other duties prescribed by local ordinance (22 M.R.S.A. § 454-A).

For further details regarding this position, refer to the *Handbook For Health Officers* prepared by and available from the Department of Health and Human Services, Bureau of Health, and to MMA's "Local Health Officer" Information Packet.

## **Public Safety Officials/Departments**

### **Police Department Law Enforcement**

Towns are not required to provide police protection services. Towns with no local law enforcement officers must rely on the State Police or County Sheriff. Those agencies will respond to criminal matters, but usually will not become involved with ordinance violations, which are civil (non-criminal) matters.

30-A M.R.S.A. §§ 2671-2677 cover the appointment and duties of local law enforcement for the town. There are three basic types of officers, each is discussed separately below:

#### ***Constables***

Constables are appointed by the municipal officers and have the powers and duties of special police officers (30-A M.R.S.A. § 2672) unless otherwise limited in the certificate of appointment. If the municipal officers do not want a constable to exercise such law enforcement powers as carrying and using a weapon or making arrests, then they must

expressly prohibit those activities in the constable's certificate of appointment. Furthermore, "[i]f a constable is restricted in carrying a weapon, this prohibition is not affected by any weapons license the individual may possess" (30-A M.R.S.A. § 2673). Constables can be authorized by ordinance or charter to issue citations (tickets) for violations of local ordinances. Constables also have the authority to keep the peace at town meetings (30-A M.R.S.A. § 2524) and public meetings and hearings.

Constables who have not been trained at the Criminal Justice Academy as provided in 25 M.R.S.A. § 2801 *et seq.* should not be involved in criminal law enforcement (i.e., they should not be authorized to carry and use a weapon or to make arrests). If an untrained constable is granted such authority, the town runs a serious risk of liability for false arrest, assault, violation of civil rights, and the like. Trained officers have specific instruction on these matters and are therefore less of a liability risk.

The law does not clearly state the duties of a constable, so these should be defined by ordinance or at least by a detailed job description compiled by the municipal officers. The constable should know exactly what ordinances and laws she or he can and cannot enforce. A single ordinance listing the ordinances under the constable's jurisdiction can be adopted by the voters, or each ordinance itself can contain a provision which specifies who will enforce it.

The municipal officers may want to create a list of the various local ordinances and indicate which official (constable, CEO, LPI, and so on) is responsible for enforcing each ordinance. If more than one official has enforcement capability, there should be some arrangement to determine who is primarily in charge. A list of this type will make it easier for the municipal officers to avoid internal conflicts, and it will make it easier for State Police or County Sheriff to deal with the appropriate local official on an enforcement matter.

Constables often are responsible for enforcing traffic and parking ordinances adopted by the municipal officers (30-A M.R.S.A. § 3009). MMA Legal Services has samples of such ordinances.

### ***Special Police Officers***

These officers are appointed by the municipal officers, and in practice are not markedly different from constables. According to § 2672, special police officers of "limited jurisdiction may be appointed for a term of not more than one year and as provided in section 2671, subsection 1. These officers have all the powers of a police officer, except as specifically provided by charter, ordinance or the certificate of appointment."

Special police officers do have the power to serve criminal summonses and traffic tickets, as well as powers to arrest and prosecute offenders of the law. Unless these officers have had proper training at a Maine Criminal Justice Academy, however, they should be prohibited from carrying a weapon, making arrests, and prosecuting cases. Untrained officers may injure themselves or others, and in either case the town may be liable.

Special police officers are appropriate for traffic control at town events, such as parades, or in emergency situations, such as at a fire scene under the direction of the fire chief, or at the scene of a bad traffic accident. A special police officer should be given a written certificate which clearly outlines his or her scope of authority, and the length of time he or she will serve in that capacity. The municipal officers fix the compensation of these officers under 30-A M.R.S.A. § 2671.

### ***Police Officers***

30-A M.R.S.A. § 2671 sets forth the duties and powers of police officers. Section 2671 provides: “[e]xcept as provided by charter, ordinance or section 2636, subsection 6, the municipal officers may appoint police officers for a definite term, and control and fix their compensation. Police officers, including chiefs of police, may be removed ‘for cause’ after notice and hearing.” In addition, § 2671 requires that the municipal officers investigate the background, qualifications, and reputation of the police officer before his or her appointment and provides that an “appointed law enforcement officer is subject to the training requirements of Title 25, chapter 341.”

### ***Training for Law Enforcement Officers***

A law enforcement officer must complete a pre-service training program at the Maine Criminal Justice Academy in order to carry a weapon and make arrests. Additional training is required to serve as both a part-time and a full-time (1040 hours or more annually) officer. For more information, contact the Maine Criminal Justice Academy at (207) 877-8000.

### ***Factors to Consider Before Appointing Law Enforcement Officers***

Some of the policy and budgeting questions to consider before appointing law enforcement officers include:

- Does the town have problems with crime that are not being adequately handled by the Sheriff/State Police?
- If there is a problem with crime, is it seasonal or year-round; i.e., will a temporary or part-time officer be sufficient?

- Does the town have problems with ordinance violations that cannot be handled by the CEO, Health Officer, or other similar enforcement agent?
- What is the cost of hiring a trained officer in relation to the crime problem?
- If the town hires a trained officer, what type of equipment (car, radar, gun, radio, etc.) must be purchased and at what cost?

### ***Use of Blue Lights***

The use of blue lights is limited to police department vehicles (i.e., vehicles owned by the municipality), the police chief's vehicle, and vehicles of other law enforcement agencies (29-A M.R.S.A. § 2054).

### ***Mutual Aid Agreements***

30-A M.R.S.A. § 2674 allows the municipal officers to authorize the police chief or other designee to enter mutual aid agreements for police assistance with other towns and cities. These agreements must be in writing and state who is responsible for personal injury or property damage caused by or done to the assisting officers. MMA has samples of such agreements, but these should also be reviewed by the municipality's liability and workers' compensation insurer so that there are no coverage problems.

### ***Mandatory Policies***

Title 25 M.R.S.A. § 2803-B requires all law enforcement agencies to adopt written policies regarding procedures to deal with topics including, but not limited to, use of force, barricaded persons and hostage situations, domestic violence, hate or bias crimes, police pursuits, citizen complaints of police misconduct and criminal conduct engaged in by law enforcement officers. 25 M.R.S.A. § 2803-B(1)(A-M). These mandatory policies must be consistent with the minimum policy standards established by the Board of Trustees of the Maine Criminal Justice Academy and each agency must certify its compliance to the Board (25 M.R.S.A. § 2803-B(3)).

### ***Hire for Non-Municipal Police Duty While Off-Duty***

Sometimes a police officer is asked by a private company or private group to work for a fee while off duty as a "special police officer" or a "security guard" performing traffic or crowd control functions. Since the hiring organization really wants someone who can perform as a police officer if trouble arises, it is best to have such an arrangement handled as a contract between the organization and the town rather than the individual officer in order to ensure that there is adequate liability insurance coverage and to avoid any confusion about the official

status of the officer if trouble arises. This contract work may require the approval of the legislative body. It also may have ramifications under the federal Fair Labor Standards Act, State workers' compensation laws, and may have to be handled in accordance with union contract provisions. Before setting up a system or signing a contract, seek specific advice from an attorney.

## **Animal Control**

Every municipality is required by 7 M.R.S.A. § 3947 to appoint one or more animal control officers (ACO) whose duty it is to enforce the animal control laws listed in § 3947.

The clerk is required to notify the Commissioner of the Maine Department of Agriculture of the name, address and telephone number of the ACO upon his/her appointment. Although the law doesn't expressly state that the municipal officers make the appointment that is how it is interpreted. No person may be appointed as an ACO who has been convicted of a criminal violation of certain sex offenses or convicted of a civil violation for cruelty to animals. An ACO must be certified by the Commissioner within six months of his/her initial appointment.

An ACO's duties include controlling dogs running at large, controlling domesticated animals that "are a cause of complaint in the community," controlling "animals that pose a threat to public health or safety," "controlling undomesticated animals in matters on which no other department or agency is charged by law to regulate," taking a stray animal to its owner (if known) or to an animal shelter (if the owner is not known), and ensuring that any injured animal which is "at large or in a public way is given proper medical attention" (7 M.R.S.A. § 3948). ACOs also have authority to deal with cases of dangerous dogs (7 M.R.S.A. § 3952), animal trespass (7 M.R.S.A. § 4041), and cruelty to animals (17 M.R.S.A. § 1023). They also are required to respond to reports of animals suspected of having rabies in accordance with 22 M.R.S.A. §§ 1313-1313-A. (See "Rabies Q&A," *Maine Townsman*, April 1997 for more information about the procedure to be followed by the ACO.) ACOs have other statutory duties and may also have duties imposed by local animal control ordinances. (See MMA's "Animal Control Officers" Information Packet for additional information on the duties of ACOs.)

Dog owners are required to obtain a license from the municipal clerk by January 1 for dogs six months or older. Any owner licensing a dog after January 31 must pay both the license fee and a late fee (7 M.R.S.A. §§ 3922, 3923-A). The municipal clerk must keep a record of all licenses issued and make monthly reports of all licenses issued and fees collected.



Municipalities are required to enter a contract or have some other arrangement with an animal shelter to accept stray animals (*7 M.R.S.A. § 3949*). The clerk must certify to the Department of Agriculture each year by April 1 the name and location of the shelter.

## **Fire Departments**

There is much confusion about the relationship between the municipal officers and the fire department. Part of this confusion stems from the fact that there are three different ways to provide fire protection for the town, and the municipal officers' control over the department will vary according to the method used. These are outlined separately below.

Once the board has determined what type of department the municipality has, it is much easier to work out the rights and obligations that the municipal officers and the department each have.

Some general points:

- A municipality is not required by law to provide fire protection at all. However, most towns do have some sort of fire department (or contract out for it), but this is a discretionary service;
- Every municipality that provides fire protection, regardless of the method, must have a fire chief (*30-A M.R.S.A. § 3153*).

(See MMA's "Fire Protection" Information Packet for additional information on this topic.)

Whether paid or volunteer, firefighters are considered town employees under the Maine Tort Claims Act (see Chapter 10) while acting on behalf of the town; this includes training time as well as responding to actual fires or emergency situations.

## **Volunteer Fire Department (V.F.D.)**

Under this arrangement, the fire department is not a department of the municipality at all. The V.F.D. is an independent corporation which elects its own officers, sets its own internal procedures, often owns property in its name, and keeps its financial accounts separate from the town. A municipality typically will support the V.F.D. with a yearly appropriation, and many towns also supply town-owned equipment (trucks, ladders, gear) and a fire station to the V.F.D.

Under Maine law, the municipality cannot legally support a V.F.D. unless it is incorporated (*30-A M.R.S.A. §§ 3151(3), 3152*). Some V.F.D.s are unincorporated associations, and the

municipality cannot do business with such associations. It is important to verify that your V.F.D. is incorporated before providing money or equipment; otherwise, the municipality runs three risks:

- 1) expending public money for private purposes, which is illegal;
- 2) exposure to legal liability for injuries caused by or to unauthorized firefighters; and
- 3) complicated litigation if disputes arise over ownership of equipment and property.

Incorporation also is important in order to ensure that the firefighters are protected from liability under the Maine Tort Claims Act.

There are special considerations even when the municipality uses the services of an incorporated V.F.D. The major problems arise over who is in charge, how the money is spent, and who owns the property (equipment and gear). A brief discussion of each follows:

- **Who is in charge?** Every municipality must have a fire chief, appointed by the municipal officers, unless the municipal legislative body provides that the fire chief is elected by the voters or elected by the municipal fire department or V.F.D. (*30-A M.R.S.A. § 3153*). If an appointed chief is unable to work with the V.F.D., the municipal officers must decide whether to seek fire protection elsewhere, or appoint a chief who is acceptable to the V.F.D., or have the municipality elect a chief. This is a political problem, not a legal problem; there is no way a court can decide who is the better chief. In many cases the chief of the V.F.D. also will be appointed as the town's fire chief, so the problem does not arise.
- **Who controls the money?** Although a V.F.D. may be financed in whole or part by the town, the municipal officers do not automatically have the authority to review all portions of the V.F.D.'s financial books, or direct how the money will be spent. To get this authority, the article by which money is raised for the V.F.D. should make it clear that the use of the money will be directed by the municipal officers or the appointed chief.

In other words, the voters can, by an appropriately worded article, attach conditions to any tax dollars which the V.F.D. will receive. These conditions should include providing the municipal officers with access to review the V.F.D.'s books to ensure that the money is being spent as directed by the voters. The article raising money for the V.F.D. can specify the items on which that money may be spent. The V.F.D. has the option of refusing to accept the appropriation if it feels that the voters or municipal officers are being too invasive or demanding.

Title 30-A M.R.S.A. § 5722 provides that where the municipality raises \$1,000 or less for the V.F.D., the municipal officers can direct the treasurer to pay this in a lump sum without itemizing the purposes for which it will be spent. If the municipality raises more than this amount, the funds are disbursed by the usual warrant to the treasurer based on itemized bills, but the municipal officers cannot reject any expenditures unless that authority was reserved as discussed above or unless they determine that the expenditure is not for a firefighting or related public purpose.

The municipal officers cannot direct the use of money that the V.F.D. raises from sources other than the town. Many V.F.D.s raise money through raffles, dances, public suppers, and the like and as such these funds are off-limits to the municipality unless the V.F.D. agrees otherwise or the town meeting requires some degree of accountability or scrutiny as a condition of receiving money from the town.

- **Who owns the property?** This is another area of confusion, but can be answered quite simply. If the municipality has purchased equipment, trucks, gear or real estate (such as the fire station) in the town's name, then it is municipal property even if used exclusively by a V.F.D. On the other hand, if the V.F.D. has purchased gear, equipment, real estate or other property in its name, regardless of where it got the money, then it will be V.F.D. property. If the V.F.D. is not incorporated, then there is no legal entity to own property, so title or ownership will vest in the members of the association individually. *Johnson v. South Blue Hill Cemetery Assoc.*, 221 A.2d 280, 284 (Me. 1966).

In order to determine ownership, the municipal officers should look at the bill of sale, title, deed or other paperwork. The municipal officers should pay particular attention to this when the V.F.D. is buying land or equipment with funds from the town. Make certain that "big ticket" items such as trucks and expensive equipment are held in the town's name. Otherwise, the V.F.D. will be considered the owner in the event of a disagreement.

When the municipality owns the fire truck and other equipment and allows the V.F.D. to use it, the municipality continues to be responsible for the care, upkeep and insurance of that property. If there are problems in this regard, the municipal officers (after obtaining voter consensus) should develop a written policy stating who is responsible for what, or could enter into a written lease with the V.F.D. specifying maintenance and insurance obligations.

- **Who is responsible for personnel problems and other internal matters?** An independent V.F.D. is responsible for its own personnel matters, including discipline, rank, and the conduct of meetings. The town fire chief has overall authority for training, equipment maintenance and firefighting operations, but has no automatic authority over the V.F.D.'s internal workings.

If persistent authority disputes and turf battles cannot be resolved between the municipal officers and the V.F.D., the town meeting has three available options. The municipality can:

- ✓ establish a municipal fire department (volunteer or employee);
  - ✓ hire another municipality or V.F.D. for fire protection; or
  - ✓ not provide fire protection services.
- **Insurance for V.F.D.s.** Members of an incorporated V.F.D. are considered employees under the Maine Tort Claims Act and Workers' Compensation Law while serving the town. Insurance is needed for vehicles, equipment and other matters, and there is generally some confusion about this responsibility.

An incorporated V.F.D. can obtain its own liability insurance, or it can be insured through the town's policy if the insurance policy allows it. Many insurance policies allow a municipality to provide coverage for incorporated fire and rescue services, and it may cost less to go this route.

If a V.F.D. is carried on a town's policy, the insurance may cover only municipal activities, i.e., those activities conducted for the municipality. In other words, social and recreational activities of the V.F.D. might not be covered, nor will buildings or other property owned by the V.F.D. when used for private purposes. In the event the insurance carrier does not provide "riders" (or split coverage) for these other non-municipal activities, the V.F.D. should get its own insurance for non-municipal activities.

## **Municipal Fire Department**

Another method of fire protection under 30-A M.R.S.A. § 3152 is to create a municipal department by ordinance or charter. Under this scheme, the municipality owns the equipment and property, and has control over personnel, internal matters, and the department's finances.

The firefighters may be full-time, part-time or on-call. Any firefighters receiving any compensation other than death/injury benefits are "municipal firefighters" as defined in § 3151(2). Many on-call firefighters receive a small stipend (usually based on number of fires

attended) for their services, but are erroneously referred to as “volunteers.” A true volunteer firefighter receives no compensation from the municipality except death/injury benefits.

The problems mentioned above regarding independent incorporated V.F.D.s do not usually arise in a municipal fire department. The debate over finances may not go away, but the department is subject to the budget process like any other municipal department. Any money the department raises on its own through raffles, dances, barbecues, and the like legally is municipal money and must be deposited with the town treasurer, appropriated by the town meeting for use by the fire department, and disbursed through the usual municipal officers’ warrant to the treasurer, based on itemized bills before it may be spent.

### **Contracting Out for Fire Protection.**

The third method of fire protection authorized by 30-A M.R.S.A. § 3152 is for the municipality to contract with another governmental unit (such as another town). This method is most often used by small towns that have no V.F.D. or municipal fire department, but it is not restricted to those towns.

Contracting out for fire protection is not the same as a mutual aid agreement. In a mutual aid agreement, each town agrees to assist the other when necessary; it is a two-way street. In the contract situation, money is paid to the other municipality or V.F.D. in return for protection, much like contracting out for snowplowing or ambulance services.

There is no generic or “one type” of contract for this purpose. The municipal officers are free (depending on extent of authority from the voters) to negotiate terms which are agreeable to both parties. Every contract should contain a paragraph about who will be in charge at a fire scene, since at every local fire there will be two chiefs involved; your town’s and the servicing towns.

The other issues to consider when drafting such a contract are the availability and suitability of the other town’s equipment, response time, and cost. You may not have much choice if there is only one other municipality around which can provide fire protection.

### **Fire Protection Zones**

In towns with a large land area or which are densely developed, it may be desirable to divide the municipality into “fire protection zones” (30-A M.R.S.A. § 3152((2))). These zones can be created by voter-adopted ordinance or by regulations adopted by the municipal officers without voter approval. The use of zones is for ease of administration—it does not give the fire department any different powers. The major difference is that each zone can have a

separate chief, so there may be more than one chief in a town, each having control over his or her assigned zone. There may not be more than one chief per zone. 30-A M.R.S.A. § 3153.

### **Fire Chiefs**

The statutory duties and powers of fire chiefs are outlined in 30-A M.R.S.A. § 3153. In addition to the chief's duties listed in 30-A M.R.S.A. § 3153, the chief acts as fire inspector, as described above in the section on "Inspectors and Enforcement Officers." The fire chief is appointed by the municipal officers, unless the municipality's legislative body provides that the fire chief is elected by the voters or elected by the members of the fire department. Regardless of how the chief is chosen, the municipal officers set the compensation for that position.

### **Junior Firefighters**

Some fire departments use 16 to 18-year old helpers called "junior" firefighters. Federal labor law (29 U.S.C. § 203(e)(4)) does not prohibit this *as long as they are volunteers*. State law (26 M.R.S.A. § 772) prohibits the employment of minors in any capacity which is hazardous. This does not generally apply to junior firefighters since they are volunteers and since firefighting is not clearly defined as a hazardous activity. However, following these child labor laws as guidelines for volunteer junior firefighters is a good policy from a risk management standpoint, even though not legally required. If the activity which the department wants its junior firefighters to perform would be prohibited for that age group if they were being paid, then from a safety standpoint it would be wise not to allow volunteers to do it either. It is also wise to assign duties for any age group by taking into account the level of maturity and the capabilities of the individual. All firefighters, regardless of age, must be trained commensurate with the activity to be performed (26 M.R.S.A. § 2101, *et seq.*). Municipalities are well advised to review their insurance policies to determine if junior firefighters are covered. For more information, see "New Rules for Junior Firefighters," "Legal Note," *Maine Townsman*, July 2001.

### **Firefighter Training**

Title 26 M.R.S.A. §§ 2101-2108 describe the safety and training requirements for firefighters.

### **Emergency Management Agency**

Title 37-B M.R.S.A. § 781 states that each municipality must be served by a municipal or inter-jurisdictional (local/county/State) agency responsible for disaster preparedness and disaster response. The Governor designates which communities must have their own agency, and which ones will participate with an inter-jurisdictional agency. The municipal officers appoint the local director (or liaison officer, if applicable) of emergency preparedness. No

municipal officer may serve as the director of civil emergency preparedness (*37-B M.R.S.A. § 782*).

## **Street Naming and Numbering/E-911 Committee**

Many Maine communities have established committees to undertake the development of proposed street names and numbers so that the municipality will be in the best position to take advantage of Enhanced 911 services implemented by the State. They also have adopted an addressing ordinance to establish a process for the committee's initial work and subsequent amendments to the list of street names and numbers adopted by the legislative body. Municipalities also designate an official or board to keep the State Emergency Services Communications Bureau informed regarding any changes to the initial list of street names and numbers. For more information about this process and a sample ordinance, see "Maine Enhanced 911 Addressing Guidebook for Local Governments," available from the Emergency Services Communication Bureau (PUC), 18 State House Station, Augusta, ME 04333, via their website at [www.maine911.com/communities/publications.htm](http://www.maine911.com/communities/publications.htm) or email [info911@maine.gov](mailto:info911@maine.gov) or by calling (207) 287-3831.

## **Other Boards, Committees, and Commissions**

The municipal officers are responsible for appointing the members of local boards, committees or commissions established pursuant to State law, local charter or ordinance, or for any committee which they have created as an advisory or study committee on a particular issue or project at their own discretion. Once a board or committee has been established, however, it has the inherent authority to establish sub-committees, absent a vote to the contrary of the legislative body. Except for a very few examples, any specifics regarding such appointments are found in the charter or ordinance provisions creating the board or committee in question. The general guidelines regarding the appointee removal process, discussed in Chapter 9, also should be considered.

## **"Standing" vs. "Ad Hoc" Committees**

There is no essential difference, except in terminology, between a "board," a "committee" or a "commission." All three terms are used to denote a group of individuals, usually at least three in number, who have been formally chosen, either by election or appointment, to perform certain tasks. The tasks typically assigned to committees are many and varied.

A "standing" committee is one that has a perpetual assignment. The school committee, planning board, and board of appeals are standing committees. If a municipality has a budget committee, conservation or parks commission, board of assessment review, or road

committee, just to name a few committees towns frequently create, those are typically standing committees as well. Members of standing committees must take an oath of office at the beginning of their term of office.

An “ad hoc” or “study” committee is formed by action of the municipal officers or town meeting to perform a specific function, and after the task is completed the committee is dissolved. Examples of such committees include a committee to consider solid waste disposal or recycling options, or a committee to review candidates and recommend a certain appointment, such as a town manager or police chief. Members of study or ad hoc committees probably should be sworn in for insurance purposes, but there is no clear legal requirement that they take an oath before the committee begins its work.

## **Authority to Establish**

The creation of some standing boards, such as the board of appeals, is regulated by various sections of Maine law. Other standing boards and committees may be created by ordinance or charter provision as exercises of home rule authority under 30-A M.R.S.A. § 3001. Some boards or committees are mandatory:

- the school board;
- the board of appeals in every municipality with a shoreland zoning or other zoning ordinance (*30-A M.R.S.A. § 4353*); and
- a local planning committee to develop a comprehensive plan where the municipality has decided to undertake development of a plan (*30-A M.R.S.A. § 4324*).

This last committee is not automatically the planning board. Almost every municipality does have what is called a planning board as well. If there is no legally established planning board, the municipal officers act as the “municipal reviewing authority” for subdivisions. (*30-A M.R.S.A. § 4301*) and other land use matters.

The discussion below identifies some committees expressly authorized by State law.

## **Planning Board**

As a result of changes in the law, there now exist what are called “old” planning boards and “new” planning boards. An “old” planning board is one created by town vote between 1957 and September 23, 1971, when the now-repealed 30 M.R.S.A. §§ 4952-4957 controlled the make-up of a town’s planning board. If the planning board is still an “old” board, it must have five members and two associate members who are appointed by the municipal officers, all serving staggered five-year terms, and a municipal officer may not serve as a member of an



“old” board. These old boards are still legal and functional, but may be replaced if the municipality adopts a new ordinance for this purpose.

A “new” planning board is one created or re-created after September 23, 1971, pursuant only to the town’s home rule authority, now found in 30-A M.R.S.A. § 3001. The make-up of a “new” planning board is established in the local ordinance or charter provisions creating the planning board. In order for the municipal officers to know the number of members and their terms of office, they would have to refer to the most recent ordinance creating the planning board or the related charter language. MMA’s *Manual for Local Planning Boards: A Legal Perspective*, provides an in-depth discussion of the planning board’s responsibilities.

## **Board of Appeals**

As is the case with planning boards, there can be “old” boards of appeals (those created between 1957 and September 23, 1971) and “new” boards of appeals (those created or recreated after September 23, 1971).

An “old” board of appeals could have been established by the municipal officers without any ordinance as long as it was made up of three members and one associate member appointed by the municipal officers, and no municipal officer was appointed to membership. For larger “old” boards of appeals, an ordinance had to be enacted by the town’s legislative body. Title 30 M.R.S.A. § 4954 (now repealed) was the enabling legislation for these “old” boards.

A “new” board of appeals is one created or re-created pursuant to the town’s home rule authority. Unlike “new” planning boards, the make-up and terms of office for “new” boards of appeals are further guided by 30-A M.R.S.A. § 2691, which requires first that all boards of appeals created after September 23, 1971 be established by an ordinance or charter.

Unless otherwise provided by ordinance or charter, the municipal officers shall appoint members of the board. Section 2691 requires that boards of appeal be comprised of five or seven members, either elected or appointed, serving staggered terms of from three to five years, with no more than three associate members. (Note: Towns with populations under 1,000 may create a three-member board of appeals.) The board of appeals law still prohibits a municipal officer or spouse of a municipal officer from serving as a member or associate member on the board of appeals. 30-A M.R.S.A. § 2691(2)(B). MMA’s *Manual for Local Land Use Appeals Boards* provides more detail on the nature and operation of this board.

## **Conservation Commissions and Private Land Trusts**

The municipal officers may appoint a conservation commission in accordance with the provisions of a local ordinance or charter pursuant to home rule or in accordance with the provisions of 30-A M.R.S.A. § 3261. Conservation Commissions formed pursuant to § 3261 should have from three to seven members appointed by the municipal officers to three-year staggered terms and a number of associate members as recommended by the Commission. The associate members are appointed by the municipal officers for one, two, or three year terms.

The primary duties of a conservation commission are to inventory all open and natural or scenic areas within the municipality and to advise the planning board, the municipal officers, and the town generally with regard to protecting special, scenic or open spaces from the adverse effects of development or overuse.

Conservation commissions formed in accordance with § 3261 are specifically empowered to acquire land or easements or accept gifts, upon the approval of the town meeting, for the purposes of open space protection. They may be given the authority to supervise the care of public parks or public lands, as well.

For details on the operation and activities of these commissions, see the manual available from the Maine Association of Conservation Commissions (MEACC) at [www.meacc.net](http://www.meacc.net).

In municipalities which have no municipal conservation commission, citizens sometimes have organized and incorporated a private non-profit land trust to do some of the things that a conservation commission might otherwise do. Land trusts are usually formed to acquire title or easement interests in land for open space purposes. For more information, contact the Maine Coast Heritage Trust at [www.mcht.org](http://www.mcht.org).

## **Park Commission**

A municipality may establish a park commission by ordinance or charter provision. 30-A M.R.S.A. § 3264 suggests that park commissions must be made up of five elected or appointed members serving five-year staggered terms. This law is more advisory than mandatory and a municipality is free to establish a park commission by ordinance which has more or less than five members who are either appointed or elected to terms specified by ordinance.

A park commission's general duties are to supervise the care of municipal parks and direct the necessary expenditures to care for the parks, although all financial decisions would be

subject to the approval of the board of municipal officers. The duties of a park commission can be included as part of a conservation commission's duties.

## **Energy Commission**

In practice, Maine municipalities rarely establish an energy commission. The primary duty of an energy commission is to recommend energy conservation strategies to the municipality. For more information regarding the creation of an energy commission, refer to 30-A M.R.S.A. §§ 3271 and 3272.

As is the case with park or conservation commissions, the make-up of an energy commission could be other than the make-up described in the statutes if described differently in a local ordinance. Also, the duties of an energy commission can be included in the duties of another board, such as a conservation commission.

## **Charter Commission**

Charters and charter commissions are governed by 30-A M.R.S.A. §§ 2101-2109. Towns are not required to have charters, but about 25% of the municipalities in Maine do. For a discussion of the policy reasons for adopting a charter, see a series of booklets regarding municipal charters published by the University of Maine's Department of Public Administration. MMA also has general charter information (see MMA's "Municipal Charters" Information Packet) and can provide municipal officers or charter commissions sample charters upon request. Some municipalities have charters adopted pursuant to the statutory process while others have pre-home rule charters adopted as Private and Special Laws by the Maine Legislature. Any amendment or revision to a Private and Special Law charter must be proposed and adopted in accordance with 30-A M.R.S.A. §§ 2101-2109.

A charter commission must be created whenever the municipality intends to adopt a charter for the first time, or revise an existing charter. A commission is not needed to amend a charter; the difference between revision and amendment is explained further below.

Either the municipal officers or the voters can decide to initiate a charter adoption or revision process. The municipal officers can decide the process is warranted and begin the procedure themselves, or the voters can petition to initiate a charter adoption or revision (*30-A M.R.S.A. § 2102*).

Once the decision has been made to seek charter adoption or revision, a charter commission must be established as outlined in § 2103. The municipal officers' role is to appoint three members to the commission, and one of these may be a municipal officer. The charter

commission has six other members (or a different number if § 2103(1)(A)(2) is used) who are elected by the voters, so the municipal officers must arrange a town meeting for this election. Once the commission is created, it operates according to statute.

Although the municipal officers do not have direct and final control over the commission, they will receive the commission's final report, and present that report to the voters. In addition, the municipal officers have the authority to extend the commission's reporting deadlines if necessary under § 2103(5)(E).

Once the municipal officers receive the final draft, they must schedule a town meeting to allow the voters to accept or reject the charter. This vote must be by secret ballot as outlined in 30-A M.R.S.A. §§ 2528-2532, even if the municipality has not adopted that method of voting in general.

The specific questions to be presented to the voters are set forth in § 2105. Additionally, the municipal officers must ensure that certain "voter information" is made available (*30-A M.R.S.A. § 2105(3)*). Any summary of a proposed charter amendment must be prepared with the advice of an attorney (*30-A M.R.S.A. § 2104(5)(B)*).

The difference between a "revision" and an "amendment" is a matter of degree, and the municipal officers must make the decision on this. If the change is one that affects the form of government (going from a town meeting to a council system, or adopting a town manager plan), it should be treated as a revision. If the change is minor, such as increasing the planning board from five to seven members, it should be treated as an amendment. Unfortunately, there is no simple rule to apply to distinguish between the two, so the municipal officers must make a judgment call.

There is a difference in procedure depending on whether the change is an amendment or a revision. Specifically, in the case of an amendment it is not necessary to convene the charter commission, but in the case of a revision this is necessary. *See* 30-A M.R.S.A. § 2104, and *see* the "Charter Revision or Charter Amendment" "Legal Note" from the May 1982 *Maine Townsman*. For additional information regarding charters, see MMA's "Municipal Charters" Information Packet.

## **Budget Committee**

State law does not require that a municipality have a budget committee or a finance committee. Such a committee may be created by local ordinance, by town warrant article and vote, or by a vote of the municipal officers. In some towns, the budget committee merely advises the municipal officers, while in other towns this committee plays a major role in drafting and

presenting the budget. The only mention of budget committees in State law appears in 30-A M.R.S.A. § 2528(5), for towns that use the secret ballot referendum method of voting on appropriations articles. In that situation, the recommendation of the budget committee, if any, must be printed in addition to the recommendation of the municipal officers. See MMA's "Budget Committee" Information Packet for more information and samples of budget committee ordinances.

## **Comprehensive Planning Committee**

If a municipality decides to prepare and adopt a comprehensive plan to support a zoning ordinance or other land use ordinances, it must first appoint a comprehensive planning committee pursuant to 30-A M.R.S.A. § 4324(2).

The municipal officers must designate and establish this committee, or they can designate the Planning Board to act in this capacity. The law gives no specifics about the size of this committee or each member's term of office. The duties and powers of the comprehensive planning committee are discussed in § 4324. This committee must conduct all of its meetings in open, public session according to § 4324(4) and the Maine Freedom of Access Act (Chapter 6).