

2011

# Ellsworth Maine City Charter

Ellsworth (Me.). City Council

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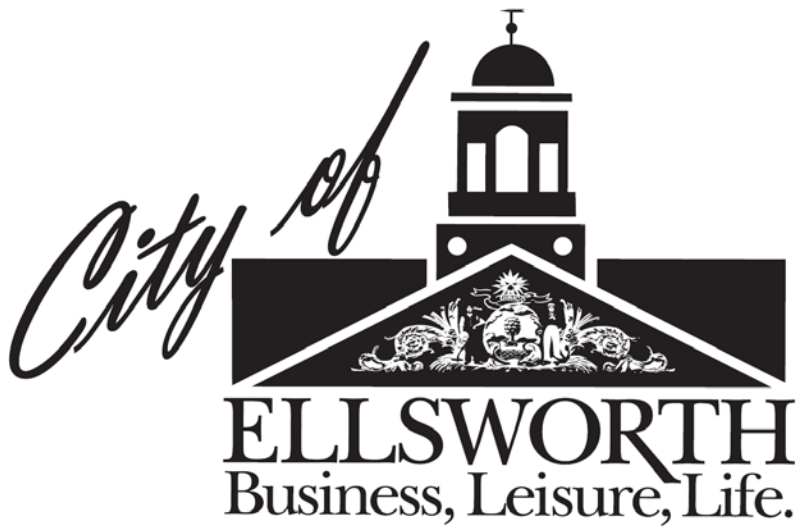
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*Charter  
of the  
City of Ellsworth*



A True Copy

ATTEST: Original on file at Ellsworth City Hall  
Heidi-Noel Grindle/City Clerk

Amended 03/02/1987  
Amended 11/07/1995  
Amended 11/04/1997  
Amended 06/10/2008  
Amended 01/01/2011

Amended by vote 11/8/2011      Effective 12/1/2011

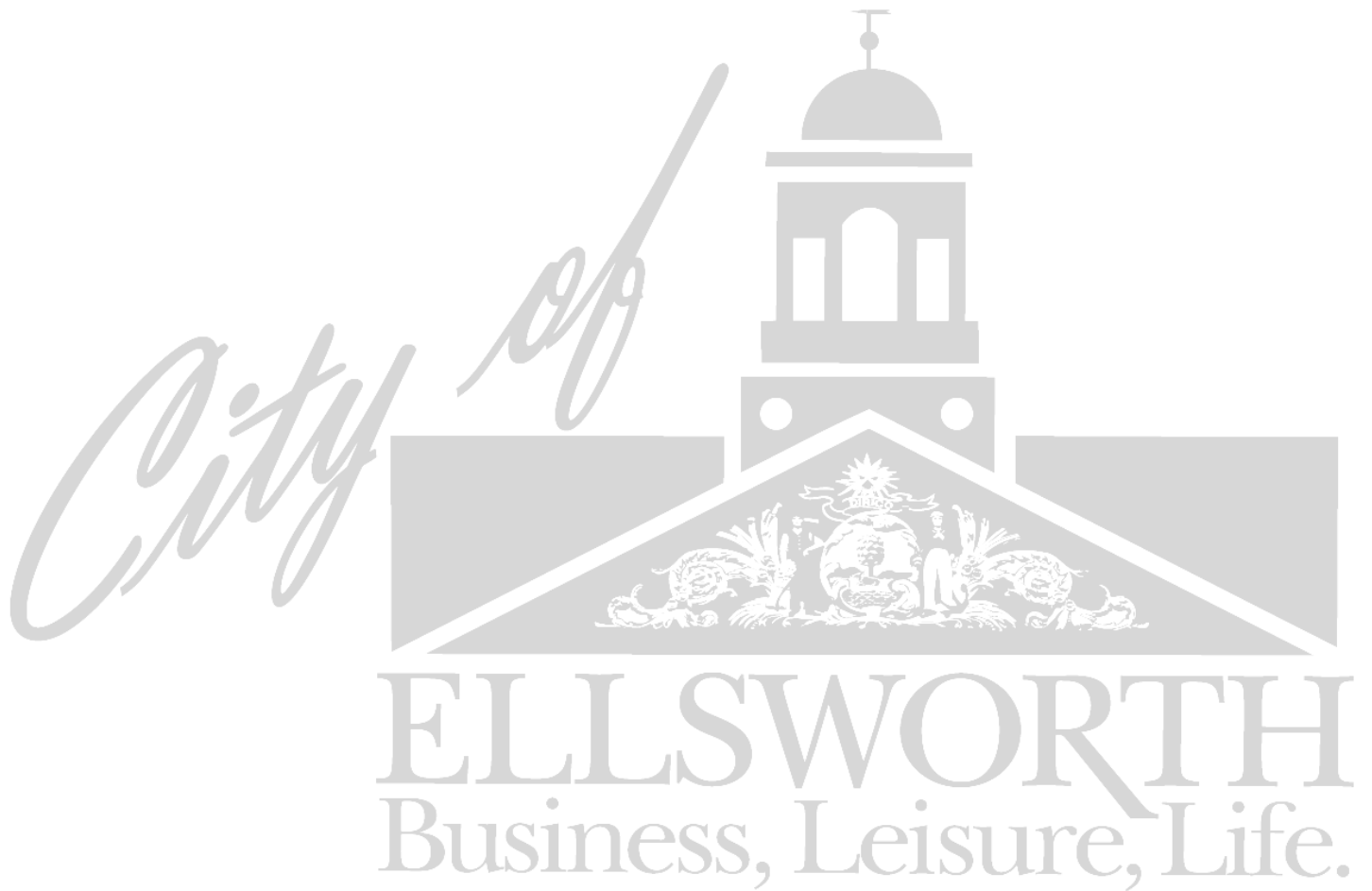
Charter of the City of Ellsworth – Effective January 1, 2011

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## **ARTICLE I**

### **Grant of Powers to the City**

#### **1.01 - Incorporation.**

The people of the territory comprised within the limits of the City of Ellsworth, as now or may be hereafter established by law, are now and will continue to be a body politic organized as a municipal corporation under the name of the City of Ellsworth and as such have perpetual succession, may sue and be sued, appoint attorneys, contract and be contracted with and adopt a seal.

#### **1.02 - Public Proceedings.**

The government established under this Charter is the agent and servant of the citizens of Ellsworth and its proceedings and transactions and records thereof will be open to the public in accordance with the Freedom of Access law.

#### **1.03 - Powers Generally.**

The City of Ellsworth is hereby specifically conferred all of the powers set forth in the Maine Revised Statutes, including home rule authority, and all other powers, privileges, rights, immunities and franchises pertinent to the conduct of a city government which are now or may be conferred upon or delegated to cities or municipal corporations under the Constitution and laws of the State of Maine to have, exercise and enjoy, subject to the Constitution and laws of the State of Maine, and may enact by-laws, ordinances and regulations for municipal purposes, not inconsistent with the Constitution and laws of the State of Maine, and impose penalties for the breach thereof.

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## **ARTICLE II City Council**

### **Sec. 2.01 - Duties and Powers of the City Council.**

The City Council will be responsible for the administration of all municipal affairs of the City of Ellsworth, except as otherwise provided by this Charter, and is vested with all of the powers and authority of the City of Ellsworth to perform the municipal affairs of the City of Ellsworth according to this Charter and in a manner not inconsistent with the laws of the State of Maine.

### **Sec. 2.02 - Composition, Eligibility, Election and Term.**

- (a) Composition. The Council is comprised of seven non-partisan, at-large members having one vote each, elected by the Registered Voters of the City of Ellsworth in accordance with this Charter.
- (b) Eligibility. Only persons who are, and remain during their term of office, residents of the City of Ellsworth and registered to vote in municipal elections in the City of Ellsworth are eligible to be members of the Council.
- (c) Election and Term. Council members are elected for three year terms; elections must be held annually to fill positions on the Council consistent with the following schedule: three positions in 2013 and each third year thereafter, and two positions in all other years; service will commence on the date appointed herein for the swearing in of Council members and terminates upon vacancy or the swearing in of a successor, whichever occurs first.

### **Sec. 2.03 - Oath of Office.**

On the first Business Day of the new week following the regular municipal election, or as soon as possible thereafter, and before entering upon their duties, the Councilors-elect will be sworn to the faithful discharge of their duties by the City Clerk, or any person qualified to administer oaths under the laws of Maine.

### **Sec. 2.04 - Quorum.**

The presence of four or more Council members will constitute a quorum, which is required for the transaction of business, but a smaller number may adjourn a meeting by a simple majority vote of Councilors present.

### **Sec. 2.05 - Meetings; Notice Requirements.**

- (a) Organizational. The Organizational Meeting will be held annually, at 10:00 a.m. on the first Business Day of the new week following the regular municipal election, or as soon as possible thereafter. The agenda for this meeting will include at a minimum, resolves establishing the following: a time and place for holding its regular meetings; the time for closing the regular monthly agenda; procedure and timeline for notification of meetings to

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the news media; the manner in which meetings are to be conducted; election of a Chairperson, appointment of the Finance Committee; procedure for signing warrants; the amount of Council stipend and the manner of its distribution.

- (b) Regular. Regular meetings of the Council must be held at least once per month and be preceded by public notice of the full agenda, posted at the City Hall at least five business days before the meeting. The agenda must also be published as a Legal Notice in the newspaper of general circulation in the City prior to the meeting.<sup>1</sup> Once public notice is posted, no additions may be made to the agenda except by a unanimous affirmative vote of the Council with six or more Councilors present.
- (c) Special. Special meetings may be called by the Chairperson or by a Majority Vote of the Council. Each member of the Council and the City Manager will be provided verifiable notice of such a meeting by the City Clerk, or the Clerk's designee. Notification to the media will follow the same procedure as for Regular meetings.
- (d) Emergency. Emergency meetings may be called by the Council Chairperson or by a Majority Vote of the Council to address an emergency. Each member of the Council and the City Manager will be provided verifiable notice of such a meeting by the City Clerk, or the Clerk's designee. Notification to the media will be given as soon as possible. The record of the proceedings will state the circumstance deemed to constitute the emergency.
- (e) Open to public. The meetings of the Council will be open to the public, except for executive sessions.

#### **Sec. 2.06 - Voting.**

- (a) Actions. The Council may act only by ordinance, order or resolve. All ordinances, orders and resolves, except budget resolves, must be confined to one subject. The budget order or resolve must be confined to the subject of appropriations only.
- (b) No ordinance, order, or resolution will be adopted or effectuated except by a Majority Vote of the Council, except as provided by this Charter.

#### **Sec. 2.07 - Records and Rules.**

- (a) Records. The Council will keep a record of the attendance of its members and its public proceedings.
- (b) Rules. The Council will adopt a Code of Ethics for the regulation of the behavior of its members, an attendance policy, and rules for the regulation of its proceedings. The Council is authorized to enforce its rules, compel the attendance of its members, punish its members for misconduct, and by Super-Majority Vote of its members may expel a member for malfeasance, misfeasance, or nonfeasance in office.

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<sup>1</sup> Amended by vote on 11/8/2011, Effective 12/1/2011



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### **Sec. 2.08 - Submission of Propositions for Popular Vote.**

The Council may submit propositions to be voted upon at any municipal or statewide election, and such ordinance, order or resolve must lawfully be effectuated if such proposition receives a majority of the votes cast thereon.

### **Sec. 2.09 - Council Chairperson.**

- (a) Selection. Annually, at the organizational meeting, and thereafter as necessary, the Council will select by Majority Vote one of its members to be Council Chairperson for the ensuing year, or the remainder thereof in instances of temporary absence or vacancy. The Council will fill a Chairperson vacancy as soon as possible.
- (b) Duties and Powers. In addition to the duties and powers of a Council member, the Chairperson will preside at all Council meetings and perform additional duties as the Council may provide in addition to those described herein. In all matters, the Chairperson's vote is of no greater or lesser effect than the vote of any other Council member. The Chairperson is the official mayor of the City for ceremonial and presentation purposes, for all purposes of military law, and as otherwise provided by Maine statute.
- (c) Temporary absence. In the temporary absence or disability of the Chairperson, the Council may select a Chairperson Pro Tempore from among its members to exercise the powers of the Chairperson for a limited period not to exceed sixty (60) Days.
- (d) Removal. If, for any reason, the Chairperson fails to attend to and reliably perform the duties of Chairperson, the Council may remove the Chairperson from that capacity by Majority Vote, after notice and an opportunity to be heard.

### **Sec. 2.10 - Vacancy.**

- (a) Vacancy. The position of Councilor will become vacant upon: non-acceptance, resignation, death, failure to qualify for office within ten (10) Days after written demand by the Council, failure of the City to elect a person to the office, or a determination of vacancy by the Council.
- (b) Determination of vacancy. A determination of vacancy may be based on a finding of abandonment of office, ineligibility, misconduct, or conduct in violation of the Code of Ethics. A determination of vacancy by the Council will require a Super-Majority Vote of the Council, after providing the subject Councilor notice and opportunity to be heard. Upon a determination of vacancy, the position is immediately deemed vacated.
- (c) Filling of Vacancies.

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- (1) A vacancy will be filled at the next regular or special City election if such an election is scheduled to take place within 180 Days of the determination of vacancy, provided that the date on which the determination of vacancy is made is not already within thirty (30) Days of such City election; or
- (2) If no regular or special City election falls within the time period set forth in subparagraph (1) above, then the Council must call a special election to fill the vacancy.
- (3) The person elected to fill a vacancy is elected to fill only the remainder of the unexpired term of the Councilor whose office was vacated.

**Sec. 2.11 - Prohibitions.**

- (a) Holding other city positions. Except where required by law, or pursuant to an agreement under the Interlocal Cooperation Act or other similar statutory provision, a Council member may not hold any other City position or City employment during the term for which the Council member was elected, and a former Council member is not eligible to be employed by the city for one year after the expiration of the term for which they were elected.
- (b) Appointments and Removals. No Council member may dictate or interfere in the appointment or removal of any City employee whom the City Manager is empowered to appoint or hire. The Council may express its views and discuss with the City Manager anything pertaining to appointment and removal of such employees.
- (c) Interference with Administration. No Council member may publicly or privately give orders to any City employee who is subject to the direction and supervision of the City Manager, but the Council may express its views and discuss with the City Manager anything pertaining to any City employee.

**Sec. 2.12 - Stipend.**

Members of the Council will receive a stipend to be set by annual resolve of the Council not to exceed \$2,500 for the Chairperson and \$2,000 each for all other members per year. The stipend maximum will be increased annually by \$50 and \$40, respectively, beginning January 1, 2012.

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### **ARTICLE III The City Manager**

#### **Sec. 3.01 - Appointment, Qualifications, Compensation.**

The City Council will appoint a City Manager upon such terms and conditions as it deems best and must enter into a written contract with the City Manager for a term not to exceed three years. The City Manager must be appointed solely on the basis of executive and administrative qualifications. The City Manager need not be a resident of the City or State at the time of appointment but may reside outside the City while in office only with the approval of the Council. Neither the provisions of this Article nor any other provisions of this Charter will be construed to afford to the City Manager any expectation of contract renewal from one contract term to the next.

#### **Sec. 3.02 - Powers and Duties of the City Manager.**

The City Manager will be the chief administrative officer of the City and has the following powers and duties:

- (a) To appoint, suspend or remove all City employees provided by law or pursuant to this Charter. Upon hire, demotion, or promotion, the City Manager is authorized to select the appropriate pay grade within the Pay Plan established by the Council as provided for in Article VI. The appointment and removal of department heads will be subject to confirmation by the Council.
- (b) To direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law.
- (c) To attend Council meetings and have the right to take part in discussion but may not vote.
- (d) To see that all laws, provisions of the Charter and acts of the Council are faithfully executed.
- (e) To prepare and submit the annual budget, the annual capital program and financial and administrative reports to the Council.
- (f) To report to the Council and perform such duties as the Council may require.
- (g) To make recommendations to the Council concerning the affairs of the City.

#### **Sec. 3.03 - Annual Review.**

The Council will annually review the City Manager's performance.

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### **Sec. 3.04 - Termination and Non-Renewal.**

The Council may remove the City Manager from office by terminating the City Manager's contract during a contract term for just cause or cause the City Manager's separation from service by non-renewal of a contract at the end of a contract term in accordance with the following procedures. These procedures are intended only to provide for transparency of process for the benefit of the public and will not be deemed to create an expectation of contract renewal or any other substantive right that is not explicitly contained in the City Manager's written contract. These procedures do not apply in the event that the City Manager voluntarily resigns from office.

- (a) Termination. Following notice and opportunity to be heard consistent with the requirements of due process, the Council may terminate the City Manager's contract for just cause during a contract term by Super-Majority Vote. The Council must make a written record of its decision setting forth the reason or reasons for its decision and make findings of fact sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision.
- (b) Contract Non-Renewal. At least ninety (90) Days prior to the expiration of the City Manager's contract, the Council will meet to discuss whether to negotiate a new contract with the City Manager or allow the contract to expire and to seek a new City Manager. If the Council decides by Majority Vote to tentatively allow the contract to expire:
  - (1) The Council will issue a preliminary resolution of non-renewal indicating the Council's intent to allow the contract to expire and containing reasons for the decision.
  - (2) Within ten (10) Days after issuing the preliminary resolution, the Council will schedule a public hearing for the purpose of accepting public comment, including comments from the Council or City Manager if they choose comment, on the preliminary resolution. If the City Manager objects to the public hearing, no hearing will be held and the preliminary resolution will immediately become final without any further action required by the Council.
  - (3) The public hearing will be held not earlier than fifteen (15) Days or later than thirty (30) Days after the issuance of the preliminary resolution. Within thirty (30) Days after the public hearing, the Council may adopt a final resolution to allow the contract to expire by Majority Vote. If the final resolution is not passed, the Council will proceed to enter into negotiations for a new contract with the City Manager.
- (c) Discussions by the Council and records relative to non-renewal and termination decisions must be undertaken and handled in accordance with the Freedom of Access Act, including its public meeting and executive session provisions, and the confidential personnel record provisions of Municipal Employment, as provided by statute.

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**Sec. 3.05 - Acting City Manager.**

The City Manager may designate a qualified administrative official of the City to serve as Acting City Manager and to perform the City Manager's duties during an anticipated temporary absence or disability, except that the Council may, at its discretion, designate a different Acting City Manager. If the City Manager is unable to designate an Acting City Manager prior to the temporary absence or disability, the City Clerk will so serve until such time that the Council makes such designation. When the position of City Manager becomes vacant, the Council will appoint a new City Manager as provided by this Article.

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## **ARTICLE IV Nominations and Elections**

### **Sec. 4.01 - Conduct of Elections.**

- (a) The regular City of Ellsworth election will be held on the Tuesday following the first Monday of November in each year.
- (b) Special City of Ellsworth elections will be held when called by the City Council or as required by this Charter, and in the same manner as regular City of Ellsworth elections.
- (c) Except as otherwise provided by this Charter, the provisions of the Maine Revised Statutes relating to qualifications of electors, registration, the manner of voting, the counting of votes, the duties of election officers, and all other particulars in respect to the management of elections, so far as they may be applicable, govern all municipal elections.

### **Sec. 4.02 - Nominations for Elective Officers to Be Made by Petition.**

The nomination of all candidates for elective offices provided for by this Charter is by petition. The nomination petition of a candidate for election must be signed by at least fifty (50) but less than 100 Registered Voters of the City of Ellsworth.

### **Sec. 4.03 - Form of Nomination Petition.**

- (a) Form and Content. The City Clerk will develop and maintain a standardized nomination petition form for use for all elections. A nomination petition may contain as many separate nomination petition papers as necessary, but will be considered a single nomination petition. All nomination petition papers must be uniform in size and style and must be assembled as one instrument for filing. Each Registered Voter who signs a nomination petition must add his or her printed name and Physical Address. Each signature must be in ink. A Registered Voter may not sign any candidate's nomination petition more than once.
- (b) Affidavit of Circulator. Each separate petition paper must have an attached affidavit from the circulator stating the number of signatures on each petition and certifying that:
  - (1) he or she personally circulated the petition paper,
  - (2) each signature was made in the circulator's presence,
  - (3) each signature is the genuine signature of the person whose name it purports to be, and
  - (4) the circulator has advised each signatory that the signatory may only sign a nomination petition once.

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**Sec.4.04 - Filing Nomination Petitions; Acceptance of Nomination Must Be Filed.**

The City Clerk will make nomination petitions available to qualified prospective candidates during the period beginning eighty-five (85) Days prior to the election date and continuing until forty-five (45) Days prior to the election date. Before issuance, the City Clerk may complete each petition paper by filling in the name of the candidate, title and term of office which is being sought.

- (a) Nomination petitions must be filed with the City Clerk during business hours on or before the forty-fifth (45<sup>th</sup>) Day prior to the election date.
- (b) Written consent of the person proposed as a candidate must be filed along with the nomination petitions. The consent must include a statement that the proposed candidate agrees to accept the nomination, and if elected, intends to serve in the office to which the person is elected.
- (c) When filed, each nomination petition and written consent must be open to public inspection under proper supervision by the City Clerk. The City Clerk must keep the nomination petitions and written consent in the City Clerk's office for six (6) months.

**Sec. 4.05 - List of Candidates to Be Published.**

The City Clerk must notify the candidates who have duly filed nomination petitions and written consents and cause a list of the candidates to be published in a newspaper of general circulation in the City of Ellsworth no less than ten (10) Days prior to the date of the election. The list must include each candidate's legal name and office to which the candidate has been nominated, as it will appear on the ballot.

**Sec. 4.06 - Ballots to Be Prepared by the City Clerk.**

The City Clerk will prepare and furnish all official ballots for use in all City of Ellsworth elections.

**Sec. 4.07 - Contents and Form of Ballot.**

The ballot will include a heading, voter instructions, the offices for election, and measures to be voted upon, if any. The ballot must be designed to allow the voter to clearly indicate the voter's intent. It may contain one or more pages and will be printed substantially as follows:

- (a) Heading: The ballot will contain a heading that clearly identifies it as an official ballot. The heading will include the type of election, the date, and the City Clerk's facsimile signature, similar to the following:

OFFICIAL BALLOT  
CITY OF ELLSWORTH, MAINE  
MUNICIPAL ELECTION  
(DATE)  
(Facsimile of Signature)

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City Clerk

- (b) Voter Instructions: Voter instructions will be clearly printed above all election information and will include directions how to mark the ballot to vote, cast a vote for an individual not listed on the ballot (write-in vote), and what to do in the event of an error or defaced ballot.
- (c) Order of Election. The City Clerk will determine the order of offices for election and layout of the ballot.
- (d) Office for Election. Each office for election will be clearly identified and include the term of the office and the number of positions to be filled. The full legal name of each qualified nominated candidate will appear on the ballot, grouped by office, and arranged in alphabetical order by surname. The ballot will be without party mark or designation. At the end of the list of candidates for each office, there must be left as many blank spaces as there are vacancies to be filled in which a voter may write in the name of any person not printed on the ballot for which the voter desires to vote.

**Sec. 4.08 - Specimen Ballot.**

The City Clerk will post specimen ballots in each polling place and publish specimen ballots in a newspaper of general circulation in the City of Ellsworth not less than ten (10) Days prior to the election date. Such specimen ballots will be printed on colored paper marked "Specimen Ballot".

**Sec. 4.09 - Election Results.**

The election results will be delivered to the City Clerk, who will then present the results to the Council. As soon as possible following an election, the Council will meet, examine the election record, and declare the results. At any election the person receiving the highest number of votes for an office will be deemed and declared elected to such office by the Council. In the event that a person elected does not take office, the Council will address the vacancy in accordance with the provisions of this Charter.

**Sec. 4.10 - Ballot Inspection, Recount, Challenge for Office.**

Ballot inspections, recounts of elections of office, referenda and the procedure for challenging a person who claims title to an office are allowed as provided for in state law.



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## **ARTICLE V Initiative, Referendum and Recall**

### **Part I. Initiative and Referendum**

#### **Sec. 5.01 - General Authority.**

- (a) Initiative: The Registered Voters of the City of Ellsworth may propose orders and ordinances to the City Council, except that an order or ordinance proposed by initiative may not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of officers or employees. If the Council fails to adopt an order or ordinance so proposed without any change in substance, the Registered Voters may vote to adopt or reject the order or ordinance at an election in accordance with this Article.
- (b) Referendum: The Registered Voters of the City of Ellsworth may require reconsideration by the Council of an ordinance, except that a reconsideration proposed by referendum may not extend to the budget or capital program unless allowed by Sec. 5.07, any emergency ordinance or ordinance relating to appropriation of money, levy of taxes, salaries of officers or employees, or ordinances mandated by state law or approved by a state agency. If the Council fails to repeal an ordinance so reconsidered, the Registered Voters may vote to approve or reject the ordinance at an election in accordance with this Article.

#### **Sec. 5.02 - Commencement of Proceedings; Petitioners' Committee.**

Initiatives and Referenda may be commenced by petition. Any five Registered Voters of the City of Ellsworth may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form. The affidavit must:

- (a) state the names and addresses of the members of the committee;
- (b) specify the individual and official mailing address to which all notices to the committee are to be sent, and
- (c) set out in full the proposed initiative ordinance or cite the ordinance sought to be reconsidered.

The City Clerk will promptly issue the appropriate petition forms to the petitioners' committee after the affidavit of the petitioners' committee is filed with the City Clerk.

#### **Sec. 5.03 - Petitions.**

- (a) Form and Content. The City Clerk will develop and maintain a standardized petition form for use for all initiative and referendum petitions. A petition may contain as many separate petition papers as necessary, but will be considered a single petition. All paper must be

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uniform in size and style and must be assembled as one instrument for filing. Each Registered Voter who signs a petition must add his or her printed name and Physical Address. Each signature must be in ink. A Registered Voter may not sign a petition more than once. At all times during their circulation, each petition must contain or have attached thereto the full text of the ordinance proposed or sought to be reconsidered.

(b) Affidavit of Circulator. Each separate petition paper must have an attached affidavit from the circulator stating the number of signatures on each petition and certifying that:

- (1) he or she personally circulated the petition paper,
- (2) each signature was made in the circulator's presence,
- (3) each signature is the genuine signature of the person whose name it purports to be,
- (4) the circulator has advised each signatory that the signatory may only sign a petition once, and
- (5) that each signatory had an opportunity before signing to read the full text of the order or ordinance proposed or ordinance sought to be reconsidered.

(c) Number of Signatures. Initiative and referendum petitions must be signed by Registered Voters of the City of Ellsworth equal in number to at least 20 percent of the total number of Registered Voters who were registered to vote at the last regular municipal election as certified by the City Clerk.

**Sec. 5.04 - Procedure after Filing.**

(a) Notice of sufficiency; Amendment.

- (1) Within 20 Days after the date on which the petition is filed, the City Clerk will determine whether the petition is sufficient under the provisions of this Charter and state law and will promptly send written Notice of the determination to the petitioners' committee by registered mail.
- (2) If the City Clerk determines the petition is sufficient, the Notice will so inform the committee.
- (3) If the City Clerk determines the petition is insufficient, the Notice will inform the committee how it is defective.
  - (i) If a petition is determined to be insufficient for lack of the required number of valid signatures, the petitioners' committee may amend the petition once by filing supplementary petitions within ten (10) Days after receiving the Notice. All supplementary petitions must comply with the requirements of Sec. 5.03(a) and (b).

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For the purpose of calculating this deadline, the Notice will be deemed to be received by the petitioner's committee three (3) Days after mailing.

- (ii) Within five (5) Days after any supplementary petitions are filed, the City Clerk will determine whether the petition as amended is sufficient under the provisions of this Charter and state law and promptly send a final Notice to the petitioners' committee by registered mail as in the case of the original petition.
  - (iii) If a petition or amended petition is determined to be insufficient and the petitioners' committee does not elect to amend or request Council review under subsection (b) of this section within the time required, the City Clerk will promptly present the Notice to the Council and the Notice will then be a final Notice determination as to the sufficiency of the petition.
- (b) **City Council Review; Amendment.** If a petition has been determined to be insufficient and the petitioners' committee does not amend it within the time provided or if an amended petition has been determined to be insufficient, the committee may file a request that it be reviewed by the Council within five (5) Days after receiving a copy of the final Notice. For the purpose of calculating this deadline, the final Notice will be deemed to be received by the petitioner's committee three (3) Days after mailing.

The Council will review the final Notice at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination will then be the final determination as to the sufficiency of the petition.

- (c) **Court Review; New petition.** A final determination as to the sufficiency of a petition by the Council may be appealed to Superior Court. A final determination of insufficiency even if sustained upon court review, will not prejudice the filing of a new petition for the same purpose.

#### **Sec. 5.05 - Referendum Petitions; Suspension of Effect of Ordinance.**

- (a) When a referendum petition is filed with the City Clerk within thirty (30) Days from the date of passage of an ordinance, the ordinance to be reconsidered will be suspended from taking effect. Such suspension terminates when:
  - (1) There is a final determination of insufficiency of the petition, or
  - (2) The petitioners' committee withdraws the petition, or
  - (3) The Registered Voters reject the referendum.
- (b) When a referendum petition is filed with the City Clerk more than thirty (30) Days from the date of passage of an ordinance, the ordinance to be reconsidered will remain in effect unless and until such time as the Registered Voters approve the referendum.

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**Sec. 5.06 - Action on Petitions.**

- (a) Action by City Council. When an initiative or referendum petition has been determined sufficient, the Council will promptly consider enacting the proposed initiative ordinance or reconsider the referred ordinance by voting for or against its enactment or repeal, as applicable. If the Council fails to adopt a proposed initiative ordinance without any change in substance within sixty (60) Days or fails to repeal the referred ordinance within thirty (30) Days after the date the petition was determined sufficient, the initiative or referendum will be considered “pending” and the Council will submit the proposed or referred ordinance to the Registered Voters.
- (b) Submission to Registered Voters. The vote on a proposed or referred ordinance will be held:
  - (1) at the next regular or special City of Ellsworth election if such an election is scheduled to take place within 180 Days of the date the initiative or referendum becomes pending, provided that the date the initiative or referendum becomes pending is not already within thirty (30) Days of such City of Ellsworth election; or
  - (2) if no regular or special City of Ellsworth election falls within the time period set forth in subparagraph (1) above, then the Council must call a special election to consider the initiative or referendum.
- (c) Copies of the proposed or referred ordinance will be made available at the polls.
- (d) An ordinance to be voted on will be presented for voting by ballot title. The ballot title of a measure may differ from its legal title but must be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot title will appear the following question in the case of an initiative: “Shall the above described order or ordinance be adopted?”; and in the case of a referendum: “Shall the above described ordinance be repealed?” Immediately below such question will appear in the following order the words “Yes” and “No”.

**Sec. 5.07 - Referendum on Capital Expenditures.**

- (a) The Registered Voters of the City of Ellsworth have the power to require reconsideration by the Council of any resolution, ordinance or other action taken by the Council to authorize a capital expenditure which exceeds one half of one percent (0.5%) of the State assessed valuation of the City of Ellsworth for the preceding fiscal year in which said capital expenditure is authorized. The provision applies to any capital expenditure regardless of the manner in which its funding is authorized by the Council but does not apply to capital expenditures which are authorized as a part of the operation of the sewer or water departments or as a part of the operation of any capital program the funding of which is totally met by rate payers and not from the general revenues of the City of Ellsworth.

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- (b) The Council may on its own initiative order that a referendum be held on any capital expenditure. If the Council orders a referendum on any capital expenditure authorized by its vote, no subsequent referendum under the provisions of subsection (a) will be available.
- (c) The procedure for initiating a referendum under this Section are the same as set forth above in the applicable provisions of Sections 5.02 through 5.06.

## **Part II. Recall**

### **Sec. 5.08 - General Authority.**

Any person elected to the office of City Councilor in the City of Ellsworth may be recalled and removed therefrom by the electors of the City of Ellsworth as herein provided.

### **Sec. 5.09 - Procedure for Initiating Recall Petition.**

- (a) Any thirty (30) Registered Voters of the City of Ellsworth may make and file with the City Clerk an affidavit containing the name of the Councilor whose removal is sought. These thirty (30) Registered Voters will constitute the Recall Committee. The affidavit must contain:
  - (1) the signature of each person who will compose the Recall Committee;
  - (2) the printed name and Physical Address of each signatory;
  - (3) the name of the individual and official mailing address to which all notices to the committee are to be sent, and
  - (4) a statement detailing the reason(s) why recall is sought. This statement detailing the reason(s) for removal will thereafter be made a part of the recall petition.
- (b) Upon filing of the affidavit and verification by the City Clerk that each signatory is a Registered Voter of the City of Ellsworth, the City Clerk will prepare a recall petition of the Councilor named in the affidavit. The Recall Committee has thirty (30) Days from the date of verification of the affidavit by the City Clerk to cause the petition to be signed by not less than 20% of the Registered Voters of the City of Ellsworth as determined at the time of the last preceding regular municipal election. To be valid, each Registered Voter's signature must be followed by the Registered Voter's Physical Address. Each separate recall petition paper must have an attached affidavit from the circulator stating the number of signatures on each petition and certifying that each signature was made in the circulator's presence and is the genuine signature of the person whose name it purports to be.

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**Sec. 5.10 - Examination and Certification of Recall Petition.**

Within twenty (20) Days after the closing of the thirty-day petition-gathering period, the City Clerk will ascertain whether or not the petition was signed by the requisite number of Registered Voters.

- (a) If the City Clerk determines the petition is sufficient, the City Clerk will attach a certification to the petition stating that:
  - (1) the petition has the required number of signatures of Registered Voters,
  - (2) each separate recall petition paper has an attached affidavit from the circulator stating the number of signatures on each petition and certifying that each signature was made in the circulator's presence and is the genuine signature of the person whose name it purports to be,
  - (3) each signatory had an opportunity to read the statement detailing the reason(s) for recall, and
  - (4) the petition is sufficient.
- (b) If the City Clerk determines the petition is insufficient, the City Clerk will notify the Recall Committee how it is defective.
  - (1) If a petition is determined to be insufficient for lack of the required number of valid signatures, the committee may amend the petition once by filing supplementary petitions within ten (10) Days after receiving the Notice. All supplementary petitions must comply with the requirements of Sec. 5.09(b). For the purpose of calculating this deadline, the Notice will be deemed to be received by the committee three (3) Days after mailing.
  - (2) Within five (5) Days after any supplementary petitions are filed, the City Clerk will determine whether the petition as amended is sufficient under the provisions of this Charter and state law and promptly send a final Notice to the committee by registered mail.
  - (3) If the committee does not file a supplemental petition or if the City Clerk determines that the petition as amended is defective, the petition will have no further force or effect and all proceedings thereon will be terminated.

**Sec. 5.11 - Calling Recall Elections.**

- (a) If the petition is certified by the City Clerk to be sufficient:

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- (1) the City Clerk will submit the petition with certification to the Council within ten (10) Days of the date of certification and will notify the Councilor whose removal is sought by such action;
- (2) within twenty (20) Days of the receipt of the City Clerk's certification, the Council will convene a meeting to order an election to be held not more than thirty (30) Days after the meeting to submit to vote the question of recall.
- (3) If recall is effective, the vacancy created thereby will be filled in accordance with the provisions of Article 2.10(c).

(b) Form of Ballot in Recall Election. The form of the ballot at the recall election will be as follows:

“Shall Councilor (name of person proposed for recall) be recalled and removed from the office of City Councilor?”

Immediately below such question will appear in the following order the words “YES” and “NO”.

**Sec. 5.12 - Majority Vote Required.**

The Councilor whose recall is sought as provided above will be recalled and immediately removed from office when a majority of those voting thereon in the municipal election vote in the affirmative.

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## **ARTICLE VI**

### **Administrative Organization**

#### **Sec. 6.01 - General Provisions.**

- (a) Creation of Departments. The City Council may establish city departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency, may be discontinued or, unless this Charter specifically so provides, assigned to any other.
- (b) Direction By City Manager. All departments, offices and agencies will be under the direction and supervision of the City Manager. With the consent of the Council, the City Manager may serve as the head of one or more such departments, offices or agencies provided there is no incompatibility of office.

#### **Sec. 6.02 - Personnel Administration.**

- (a) Merit Principal. All appointments and promotions of city officials and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.
- (b) Compensation. The Council will adopt, maintain, and in its discretion update from time to time, a Pay Plan establishing ranges of pay for the various classifications of City employees. Except as otherwise provided by this Charter, the City Manager, in consultation with the Finance Committee of the City Council, is authorized to select the appropriate pay grade within the Pay Plan for an employee upon hire, demotion, or promotion.
- (c) Personnel Rules. The Council must adopt, maintain, and in its discretion update from time to time, a Personnel Ordinance to govern non-unionized employment. The Ordinance should address, but is not limited to, the following:
  - (1) Employment classifications and job descriptions;
  - (2) Compensation methodology and employee benefits;
  - (3) Methods for determining the merit and fitness of candidates for appointment or promotion;
  - (4) The policies and procedures regulating reduction in force;
  - (5) The policies governing disciplinary measures such as suspensions, demotion or discharge, with provisions for presentation of charges, hearing rights and appeals;
  - (6) The hours of work and attendance regulations;



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- (7) Employee conduct;
- (8) Grievance procedures; and
- (9) Such other provisions as the Council deems appropriate.

### **Sec. 6.03 - Appointed Administrative Officials.**

The Council will annually appoint the following appointed Administrative Officials. Except as provided herein, appointed Administrative Officials will be subject to the City's Personnel Rules, will report to the City Manager, and will perform the duties ascribed to them by general law, this Charter, City Ordinance, or assigned to them by the City Manager.

- (a) Assessor. The Assessor may not be removed from office based on disagreement with respect to assessing practice employed by the assessor where such practice is generally accepted and lawful;
- (b) City Clerk;
- (c) Treasurer;
- (d) Tax Collector;
- (e) Agent to the Overseers.

### **Sec. 6.04 - City Attorney.**

The City Attorney will serve as chief legal advisor to the Council, the City Manager and all City departments, boards, agencies and commissions, except for a School Board and except in matters involving criminal activity and prosecution. The City Attorney may represent the City in all legal proceedings and perform any other duties prescribed by ordinance and law. The City Attorney may be a law firm under contract with the City, or an employee of the City of Ellsworth appointed by the Council in which case the City Attorney will be considered an appointed Administrative Official.

### **Sec. 6.05 - Confirmed Administrative Employees.**

The City Manager will annually appoint the following Administrative Employees subject to confirmation by the Council, provided that the City elects to create, fill, and maintain such positions. In the event the City elects to create, fill, and maintain a department head position or deputy department head position not listed herein, such positions will be deemed to be confirmed Administrative Employees. Confirmed Administrative Employees will be subject to the City's Personnel Rules (unless a member of a collective bargaining unit), will report to the City Manager, and will perform the duties ascribed to them by general law, this Charter, City Ordinance, or assigned to them by the City Manager.

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- (a) Building Inspector;
- (b) Building Maintenance Supervisor;
- (c) City Planner;
- (d) Code Enforcement Officer;
- (e) Community Development Director;
- (f) Electrical Inspector;
- (g) Emergency Preparedness Director;
- (h) Fire Chief;
- (i) Harbormaster;
- (j) Health Officer;
- (k) Plumbing Inspector;
- (l) Police Chief;
- (m) Police Lieutenant;
- (n) Superintendent of Highways;
- (o) Superintendent of Wastewater Treatment;
- (p) Superintendent of Water Department;
- (q) Technology coordinator
- (r) Tree Warden;
- (s) Welfare Director; and
- (t) Any Deputies or alternates to any of the above positions.

**Sec. 6.06 - Oath of Office.**

Upon hire, promotion, appointment, or confirmation, all appointed Administrative Officials and confirmed Administrative Employees, police department personnel, and the City Manager must be sworn to the faithful discharge of the duties incumbent upon him or her and to support the Constitutions of the United States and the State of Maine, the laws of the State of Maine, this Charter, and City ordinances.

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## **ARTICLE VII Business and Financial Provisions**

The Treasurer will have and perform for the City of Ellsworth all of the powers and duties imposed by law upon municipal treasurers and tax collectors. For purpose of this Article, functions of the Treasurer may be delegated to the Deputy Treasurer(s) appointed by the City Manager as set forth in Article VI, Section 6.05 of this Charter.

### **Sec. 7.01 - Accounts and Records.**

The Treasurer will maintain all City of Ellsworth accounts showing the financial transactions of all departments of the City of Ellsworth. The Treasurer will have the authority and will be required to:

- (a) Maintain the City of Ellsworth's general accounting in conformity with generally accepted accounting principles of municipal accounting. A uniform classification will be used for revenues, expenditures, and balance sheet accounts;
- (b) Exercise financial budgetary oversight;
- (c) Submit to the City Council through the City Manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the City of Ellsworth;
- (d) Prepare for the City Manager a complete financial statement and report for the entire fiscal year,
- (e) Certify that there is an unencumbered appropriation balance or available funds before an expenditure will be made as described in the City of Ellsworth's Procurement Policy.

### **Sec. 7.02 - Annual Audit.**

All the accounts of the City of Ellsworth will be audited annually by a certified public accountant to be chosen by the Council, or by an accountant assigned by the State auditor. Upon completion, the audit report will be delivered to the Council and made available to the public.

### **Sec. 7.03 - Bonds of Officials.**

The Council will require a satisfactory bond with sufficient surety from all administrative officials trusted with any of the public moneys; and may require a bond from other officials and employees as it may deem advisable.

### **Sec. 7.04 - Collection and Custody of City of Ellsworth Moneys.**

All moneys paid to the City of Ellsworth or received by any municipal official, employee, or agent of the City of Ellsworth for, or in connection with the business of the City of Ellsworth

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will promptly be paid into the City Treasury and will be deposited with such banking depositories as the Council may determine. Interest from all deposits of money will accrue to the benefit of the City of Ellsworth.

#### **Sec. 7.05 - Payments.**

Money will be paid out only on warrants. Warrants will be issued by the Treasurer and countersigned by the City Manager and a majority of City Council Finance Committee members. In weeks in which there is not a warrant issued, the signature of the Treasurer will be sufficient for payroll matters only. The Treasurer will examine all payrolls, bills and other claims against the City of Ellsworth, and will not issue a warrant for payment until the claim is in proper form, correctly computed, duly certified, and legally due and payable.

#### **Sec. 7.06 - Budget.**

- (a) Fiscal Year. The City of Ellsworth's fiscal year will begin on the first day of July and will end on the 30th day of June of each calendar year.
- (b) Budget Document. The annual budget will contain: (1) an estimate of all revenue cash receipts anticipated from sources other than the tax levy for the ensuing fiscal year; (2) the estimated expenditures necessary for the operation of departments, offices and agencies of the City of Ellsworth; (3) debt service requirements for the ensuing fiscal year; (4) an estimate of the sum required to be raised by the tax levy for the ensuing fiscal year; and (5) a balanced relationship between the total estimated expenditures and the total anticipated revenues and the tax levy, except for overlay as permitted by statute for the General Fund. All estimates will be in detail showing revenues by sources and expenditures by fund. The budget will be arranged to show comparative figures for receipts and expenditures for the current and next preceding fiscal years.
- (c) Capital Program. As part of the budget document, the City Manager will submit to the Council an updated ten-year capital program. The capital program will include: (1) a clear summary of its contents; (2) a list of all capital improvements which are proposed to be undertaken during the ten ensuing fiscal years with appropriate supporting information as to the necessity for the improvements; (3) cost estimates, methods of financing, and recommended time schedules for each improvement. The information may be revised and extended each year with regard to capital improvements still pending or in the process of construction or acquisition.
- (d) Budget Submission. The City Manager will submit to the Council a proposed annual budget for the ensuing fiscal year no later than the second Monday in April.
- (e) Budget Message. The budget will be accompanied by a budget message from the City Manager which will contain the recommendations of the City Manager concerning the fiscal policy of the City of Ellsworth, a description of the important features and major increases or decreases in the proposed budget, and summary statements of the budget according to principal sources of revenue and the headings of expenditure.

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- (f) Budget Copies. The City Manager will print sufficient copies of the budget and the budget message for the use of the Council and the public. The budget and the budget message will be a public record.
- (g) Budget Changes. The Council may insert new items of expenditures or may increase, decrease, or strike out items of expenditure, except that no item of appropriation for debt service will be reduced.
- (h) Budget Resolve. As early as practicable, before the beginning of each fiscal year, the Council is expected pass an annual budget resolve that will be based on the budget submitted by the City Manager. However, in the event the Council fails to adopt a budget by the beginning date of the fiscal year, the Council may make appropriations by a continuing resolution to the various departments and accounts in the amounts sufficient to finance the necessary expenses until the budget resolve is in force.

#### **Sec. 7.07 - Lapse of Appropriations.**

Every appropriation, except an appropriation for a capital expenditure, will lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for capital expenditure will continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation will be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

#### **Sec. 7.08 - Amendments after Budget Resolve.**

- (a) Transfers. The City Manager may transfer any unencumbered appropriation balance or portion thereof from line item to line item within cost centers, but may not expend funds in excess of the cost center appropriation. The Council may, by Council Order, transfer any unencumbered appropriation balance or portion thereof between cost centers.
- (b) Supplemental Appropriations. Additional appropriations within the budget may be made by Council order if the Treasurer verifies that there are sufficient unanticipated and unappropriated revenues. Additional appropriations may also be covered by an appropriation from a reserve account or an interfund transfer from the General Fund or other fund.

#### **Sec. 7.09 - Borrowing and City of Ellsworth Credit.**

- (a) The City of Ellsworth may only borrow money for municipal purposes.
- (b) The City of Ellsworth may not extend the City of Ellsworth's credit to any individual, association or corporation.
- (c) Issue of Bonds and Notes

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- (1) Authorization. No order providing for borrowing under this section will be passed except by an affirmative vote of the Super-Majority of the Council. Money may be borrowed within the limitations fixed by the constitution and statutes of the State, by the issue and sale of bonds or notes pledged on the credit of the City of Ellsworth. The proceeds will be used for the acquisition of land or interests in land or personal property, the construction and equipment of buildings and other permanent public improvements, the purchase of equipment, the payment or refunding of bonds, notes and certificates of indebtedness previously issued, or for any other purpose authorized by law. No bonds and/or notes issued pursuant to this section will be used for the funding of current operating expenses except as provided in (d)(1) of this Section. No order providing for borrowing under this section will be passed without public notice by posting such notice in one or more public places in the City of Ellsworth and by publishing the same at least in one or more newspapers of general circulation, not less than ten days before final action by the Council. The Council has final determination of the terms and conditions of the general fund debt, enterprise debt, or refunded obligation issuances, or a combination thereof.
- (2) Term. Every issue of bonds will be payable within a fixed term of years, the term of such bond to not exceed the estimated period of utility of the interests, public improvements, equipment or other items purchased with the proceeds from the sale. The declaration of the Council embodied in the order authorizing the issue will be conclusive determination of the estimated period of utility thereof. The terms within which all bonds will be made payable will in no case exceed 30 years. Any issue of bonds or notes may be made callable before maturity by appropriate recital in the order authorizing the borrowing.
- (3) Tax Levy. Every order for the issue of bonds or notes except revenue bonds and notes issued in connection with temporary loans as authorized in Section 9(d) of this Article will provide for a tax levy for each year of an amount necessary to meet the payment of the annual serial installment of principal and the annual interest; and such amounts will be included in the tax levy for each year until the debt is extinguished.

(d) Temporary Loans

- (1) Tax Anticipation Notes. Money may be borrowed in anticipation of receipts from taxes during any fiscal year, but the aggregate amount of such loans outstanding at any one time will not exceed eighty percent (80%) of the revenue received from taxes during the preceding year in which said loans are made. The note must be repaid in the same fiscal year that it is borrowed.
- (2) Other Temporary Loans. Money may be borrowed temporarily in anticipation of money of authorized issues of bonds or notes, or of other revenues payable to the City of Ellsworth from any source as provided by general law. All such loans shall be paid within three (3) years and are subject to the provisions of the laws of the State of Maine in relation thereto.

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**Sec. 7.10 - Reserve Funds.**

- (a) Undesignated Fund Balance. Upon receipt of the audit for the previous fiscal year, the Treasurer shall calculate the percentage of undesignated fund balance. The Council may then by order, transfer amounts from the City of Ellsworth's undesignated fund balance to a designated reserve or contingency account per the City of Ellsworth's Designated and Undesignated Fund Balance Ordinance. Transfers from this fund will be made only by a direct vote of the Council or budget resolve.
- (b) Credit Reserve Fund. The Council has the authority to adopt by order a credit reserve fund as provided for in statute. The purpose of this fund will be to assist the City of Ellsworth in continuing its normal operations without increasing the tax rate.
- (c) Other Reserve Funds. The Council has the authority to create such other reserve funds as authorized by statute or that the Council deems advisable. The order creating such fund will include a statement as to the intent and purpose of the fund, the funding mechanism, and the authority to use and withdraw from the fund.

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## **ARTICLE VIII The City Library**

The administration of the Ellsworth Public Library, a department of the City, is the responsibility of an elected Board of Trustees whose powers and duties are defined herein.

### **Sec. 8.01 - Board of Trustees, Composition, Eligibility Election and Term.**

- (a) Composition. The Board is comprised of five members elected by the Registered Voters of the City in accordance with this Charter.
- (b) Eligibility. Only persons who are, and remain during their term, residents of the City and registered to vote in the City's municipal elections are eligible to hold the office of Trustee.
- (c) Election and Term. Trustees are elected for three year terms consistent with the following schedule: one position in 2013 and each third year thereafter, and two positions in all other years; service will commence on the date appointed for the swearing in of City Council members under Article II and terminates upon vacancy or the swearing in of a successor, whichever occurs first.

### **Sec. 8.02 - General Powers and Duties of the Board of Trustees.**

The Board has the powers, duties, and responsibilities necessary for the administration of the Ellsworth Public Library and described herein. The Board will:

- (a) Be the head of the department, but may delegate this duty to the Library Director;
- (b) Identify, support, and promote the best interests of the Ellsworth Public Library;
- (c) Select and appoint for hire, a Library Director and all Library staff, and suspend or remove the same, for and upon such terms, compensation and conditions as the Board deems best, but not inconsistent with this Charter or state or federal law;
- (d) Annually furnish the Council a summary of the budget required during the ensuing municipal year, for the support and operation of the Ellsworth Public Library, upon which the Council will adopt a gross appropriation to be under the direction and control of the Board;
- (e) Regularly report and make recommendations to the Council and City Manager;
- (f) Determine and adopt the written policies governing the purposes and operation of the Ellsworth Public Library, including but not limited to:
  - (1) Hours of operation, circulation, facility and material use, staffing, and holidays;
  - (2) Type, selection, and quality of materials in the Library's collection;



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- (3) Services offered to patrons, schools, groups and nonresident borrowers;
- (g) Have the authority, on behalf of the City of Ellsworth, to sell and lease equipment, sell or otherwise dispose of materials, and to manage facilities under its control in accordance with written policies;
- (h) Have the authority to conditionally accept donations and gifts for the Library on behalf of the Council. All gifts will be reported to the City Treasurer and monetary gifts will be remitted to the City Treasurer, who will then report all gifts received during the previous month to the Council. Acceptance of the report by the Council without action constitutes ratification;
- (i) Manage and direct the use, investment, and allocation of all contributions, gifts, and funds donated to the Ellsworth Public Library, or to the City of Ellsworth for the benefit of the Library, in a manner consistent with state law and in coordination with the Treasurer;
- (j) Not execute checks or otherwise disburse funds, this authority being expressly reserved to the Treasurer, who will keep all of the Library's accounts and will execute all checks and disbursements as the Board directs.

**Sec. 8.03 - Open Meetings, Records, Selection of Officers.**

The Board will meet on a regularly scheduled day and time as established by the Board. The Board's meetings are open to the public, except for executive sessions, and must be preceded by three (3) Business Day's public notice of its agenda, which will be conspicuously posted at City Hall and at the Library. An accurate record of Board meetings must be made and kept on file in the Library. At the first meeting after each annual election, the Board will elect from its membership a Chairperson, Treasurer, and Secretary.

**Sec. 8.04 - Quorum, Voting.**

Three or more Trustees constitute a quorum for the purpose of voting. Each Trustee has one vote. For the purposes of this Article only, the affirmative vote of a majority of a quorum constitutes a majority vote of the Board and is required for all Board action, with the exception of a determination of vacancy which requires the affirmative vote of four Trustees.

**Sec. 8.05 - Vacancy.**

The office of Ellsworth Public Library Trustee will be deemed vacant for the same reasons that the office of City Councilor will be deemed vacant as provided in Article II. If any vacancy does occur, the remaining Board members will appoint a person to fill the position until an eligible person is elected at the next regular City Election to serve the remainder of the unexpired term of the vacated Trustee position.

**Sec. 8.06 - Compensation.**

Members of the Board will serve without compensation.

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**Sec. 8.07 - Library Director.**

The Library Director will perform such duties as the Board requires, which may include, but are not limited to, the following:

- (a) Supervise all of the Library's operations including personnel, staffing, and employment;
- (b) Carry out the policies of the Ellsworth Public Library as adopted by the Board;
- (c) Prepare regular reports regarding the Library's operation, affairs and future needs;
- (d) In consultation with the Board, annually prepare a budget for the Library's operation;
- (e) Monthly report the expenditures against the budget to the Board;
- (f) Attend all Board meetings and any other meetings designated by the Board, including department-head meetings and professional development conferences;
- (g) Maintain an active program of public relations.

**Sec. 8.08 - Operation of the Library.**

As a department of the City of Ellsworth, the Ellsworth Public Library is subject to all applicable regulations, resolves and ordinances of the Council not inconsistent with this Charter or state or federal law.

**Sec. 8.09 - Employees.**

All employees of the Ellsworth Public Library are employees of the City of Ellsworth notwithstanding the Board's administration and will have the benefits of and be subject to any and all City ordinances governing City employees with the exception of job descriptions, work hours, and pay scales which will be the responsibility of the Board, unless otherwise covered by a collectively bargained employment agreement.

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## **ARTICLE IX Local Advisory Board; School Board**

### **Part I. Local Advisory Board**

#### **Sec. 9.01 - Local Advisory Board.**

The City of Ellsworth is authorized to establish by ordinance a Local Advisory Board to the Regional School District of which it is a member.

### **Part II. School Board**

#### **Sec. 9.02 - School Board; Applicability; Eligibility; Election and Terms.**

- (a) In the event that the City of Ellsworth withdraws from the Regional School Unit of which it is a member and decides to manage its schools as a department of the City, a School Board of five members will be elected by the voters of the City in accordance with Article IV for such purpose.
- (b) Eligibility. Only persons who are Registered Voters in the City of Ellsworth will be eligible to hold the office of School Board member. Except where clearly authorized by law, or pursuant to an agreement under the Interlocal Cooperation Act, no Board member may hold any other city position or employment.
- (c) Election and Terms. Each member will be elected for a term of three years, provided, however, that at the first election after the reestablishment of the Board, the two Board candidates receiving the first and second greatest number of votes will be elected for three-year terms, the two Board candidates receiving the third and fourth greatest number of votes will be elected for two-year terms, and the one Board candidate receiving the fifth greatest number of votes will be elected for a one-year term.

#### **Sec. 9.03 - Vacancy.**

The office of a Board member will be deemed vacant for the same reasons that the office of City Council member will be deemed vacant as provided in Article II. If any vacancy does occur, the remaining members of the Board will appoint a person to fill the position until the next regular City Election. At that election, a Board member will be elected to service the remainder of the unexpired term of the vacated position.

#### **Sec. 9.04 - Powers and Duties.**

The Board will have all the powers and duties prescribed for School Boards by the general laws of the State of Maine, including the authority for and on behalf of the City of Ellsworth to sell and lease personal property and to lease real estate under their authority and control. The Board will be the head of the city education department and will annually furnish the City Council a

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summary of the budget required during the ensuing municipal year, for the support of public education. On the basis of this budget summary, the Council will adopt a gross appropriation for the operation of the City schools to be under the direction and control of the Board.

**Sec. 9.05 - Chairperson and Vice-Chairperson.**

At the first meeting annually, the Board will elect by majority vote from among its members, a Chairperson and Vice-Chairperson for the ensuing year. The Chairperson will preside at all meetings of the Board and will have a vote as other members of said Board. The Vice-Chairperson will act as Chairperson during the absence or disability of the Chairperson.

**Sec. 9.06 - Procedure.**

- (a) Meetings. Regular meetings of the Board must be held at least once per month and be preceded by at least five Business Days' public notice of the full agenda, posted at the City Hall and published in a newspaper of general circulation in the City. Special meetings may be called by the Chairperson or by a majority vote of the Board. Each member of the Board will be provided verifiable notice of such a meeting. Notification to the media shall follow the same procedure as for Regular meetings. The meetings of the Board shall be open to the public, except for executive sessions.
- (b) Records. The Board will keep a record of the attendance of its members and its public proceedings.
- (c) Three members of the Board will constitute a quorum.
- (d) Voting. For the purposes of this Article only, the affirmative vote of three or more board members constitutes a majority vote of the Board. No decision will be made or effectuated except by a majority vote of the Board. Voting results will be recorded in the minutes and will reflect how each member voted. Each Board member will vote on all issues and questions presented for vote except when a valid conflict of interest clearly exists. If a Board member does abstain from a vote for reasons other than a recognized conflict of interest, the Board member will be considered to have cast a vote with the majority and the record will so show.
- (e) Conflicts of Interest.
  - (1) Any Board member who believes that the Board member may have a conflict of interest as defined by the Ethics Code must disclose the possible conflict and the relevant information. The disclosure must be made prior to consideration of the item that is the subject of the potential conflict or as soon as the potential conflict is discovered. If a Board member reasonably believes, based on the Board member's own personal knowledge or upon a credible report from a member of the public, that another Board member has a potential conflict of interest that has not been disclosed in a timely manner, the Board member must disclose the possible conflict and the relevant information to the Board. The Board member concerned will then be given the opportunity to respond.

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- (2) Once the issue of conflict has been raised, the remaining Board members will review the facts as disclosed to them and must vote on whether or not such individual has a conflict of interest with respect to the item concerned. The Board may request an advisory opinion from the Board of Ethics prior to voting on the question.
- (3) If the Board finds the existence of a conflict of interest, the Board member will be excused from participating in discussion, deliberation or vote on the item concerned. The Board member must immediately leave the meeting room or relocate to the area of the room occupied by the general public and may not return to the Board member's regular seat as a member of the Board until deliberation and action on the item is completed. The Board member may participate in the matter in the same manner and to the same extent as any other member of the public.

**Sec. 9.07 - Stipend.**

Members of the Board will receive the same stipend as provided to Councilors in accordance with Article II, Sec. 2.12.

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## **ARTICLE X General Provisions**

### **Sec. 10.01 - Swearing in Officers.**

Every elected Municipal Officer and Council Appointee must be sworn to the faithful discharge of the duties incumbent upon the Officer or Appointee according to the Constitution and laws of the State of Maine and this Charter and ordinances of the City and must be sworn to support the Constitutions of the United States and the State of Maine.

### **Sec. 10.02 - Council Appointees.**

The City Council will appoint Registered Voters of the City of Ellsworth to serve at-will on such Boards and Commissions as may be created by Ordinance, except that the Council may by Ordinance authorize the appointment of other qualified persons to serve on such Boards if permitted under state law. Council Appointees will serve without compensation and will not be subject to the City's Personnel Rules. Such Boards and Commissions may include, but are not limited to, a Harbor Commission, Board of Appeals, Recreation Commission, Planning Board, Historic Preservation Commission, Registration Board of Appeals, Board of Assessment Review, and Water Supply Commission.

### **Sec. 10.03 - Prohibitions.**

No Councilor, Council appointee, employee, or other elected or appointed official may, in such capacity:

- (a) unlawfully discriminate against any person with respect to any position or appointive city administrative office because of race or color, sex, sexual orientation, physical or mental disability, religion, political opinions or affiliations, or ancestry or national origin;
- (b) willfully make any false statement or attempt to commit any fraud that would prevent the impartial execution of the laws of the State of Maine, this Charter, or any ordinance adopted by the Council;
- (c) directly or indirectly offer, provide, solicit, or accept any money, service or other valuable consideration for any appointment, proposed appointment, promotion, or proposed promotion to a position in the municipal service;
- (d) solicit any assessments, contributions, or services for any political party from any employee in the municipal service if the person soliciting holds a compensated appointive City position; or
- (e) knowingly and willfully violate any provision of this Charter or any rules of ethics adopted by the Council.

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Nothing herein affects the right of any person to hold membership in or support a political party, vote as one freely chooses, express opinions publicly or privately on all matters of public concern, maintain political neutrality, or attend political meetings.

Any person found in violation of this section by a court of competent jurisdiction or by the Council acting in a judicial capacity will be ineligible for a period of five years thereafter to hold any City office or employment, and, if currently holding City office or employment, will immediately forfeit the office or position.

**Sec. 10.04 - Severability.**

If any provision of this Charter is held invalid, the other provisions of the Charter are not affected thereby. If the application of this Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances are not affected thereby.

**Sec. 10.05 - Word Usage and Definitions.**

Except as herein defined or where context clearly indicates otherwise, terms are to be interpreted in accordance with their common and generally accepted meanings. Terms defined by this Section are capitalized throughout the Charter.

- (a) “Day” means calendar day unless prefaced by the word “business”; “Business Day” means Monday through Friday except for days when Ellsworth City Hall is not open for business.
- (b) A “Majority Vote” of the Council means the affirmative vote of four or more Councilors.
- (c) “Municipal Officers” and “Officers” means the Councilors of the City of Ellsworth.
- (d) “Physical Address” means a person’s street, street number, and municipality.
- (e) “Registered Voter” means a person who is both a resident of the City of Ellsworth and registered and eligible to vote in a municipal election.
- (f) A “Super-Majority Vote” of the Council means the affirmative vote of five or more Councilors.
- (g) The terms “will” and “must” are mandatory.
- (h) Any reference in this Charter to a Maine State statute or other law refers to that statute or law in its current form and includes any amendments that may be enacted from time to time.

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**Sec. 10.06 - Computation of Deadlines.**

Computation of deadlines. In computing any period of time prescribed or allowed by the Charter, the Day of the act or event that triggers the running of the time period is not to be included. The last Day of the period so computed is to be included if it is a Business Day.

**Sec. 10.07 - Effective Date of Revised Charter.**

This Charter as revised will take effect for all purposes beginning 12:00:01 am on the first Day of January following its adoption, before which time the prior Charter will remain in effect.

**Sec. 10.08 - Incumbents.**

As of the effective date of this Charter, all incumbent Council members and all other incumbent elected and appointed officials and employees will continue in their respective positions and offices until their terms of office or appointments established by the Charter in effect on their date of election or appointment have been completed. Upon completion of a term of office, the office will be filled as provided by this Charter.

An employee holding a city position at the time this Charter takes full effect, who was serving in that same or a compatible position at the time of its adoption, will not be subject to a competitive test as a condition of continuance in the same position but in all other respects will be subject to the personnel system.

**Sec. 10.09 - Pending Matters.**

All rights, claims, actions, orders, contracts and legal administrative proceedings will continue except as modified pursuant to the provisions of this Charter, and in each case will be maintained, carried on or dealt with by the city department, office, or agency appropriate under this Charter.

**Sec. 10.10 - Ordinances Continued.**

- (a) All ordinances in force at the time when this Charter takes effect, not inconsistent with the provisions of this Charter, will continue in force until amended or repealed.
- (b) All city ordinances, resolutions, orders and regulations which are in force when this Charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the Constitution and laws of the State of Maine permit, all laws relating to or affecting this city or its agencies, Officers or employees which are in force when this Charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter of ordinances or resolutions adopted pursuant thereto.



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**Sec. 10.11 - Charter Review.**

The Council will review the Charter at least once every ten (10) years to determine whether any amendments should be considered by the Council or whether a Charter Commission should be established.