

## **FINANCE & ADMINISTRATION COMMITTEE MEETING**

Tuesday, April 22, 2014

**6:00 p.m.**

Hampden Town Office

1. Meeting Minutes
  - a. April 7, 2014
2. Review & Sign Warrants
3. Old Business
  - a. Bangor Humane Society Contract 2014-2015
  - b. Codification of Charter & Ordinances
  - c. Legal Issues re Charter & Citizens Petitions
4. New Business
5. Public Comment
6. Committee Member Comments

## FINANCE & ADMINISTRATION COMMITTEE MEETING MINUTES

Monday, April 7, 2014

### Attending:

Mayor Carol Duprey	Councilor Jean Lawlis
Councilor Greg Sirois	Town Manager Susan Lessard
Councilor David Ryder	Residents
Councilor William Shakespeare	
Councilor Tom Brann	

The meeting was opened at 6:00 p.m. by Mayor Duprey.

1. Meeting Minutes
  - a. March 17, 2014 – The minutes of the 3/17/14 meeting were reviewed and accepted with no changes.
2. Review & Sign Warrants – The warrants for payments of bills and payroll were reviewed and signed.
3. Old Business
  - a. Bangor Humane Society Contract 2014-2015 – The Town Manager reported that the Town of Bucksport animal shelter may be willing to consider acting as the animal shelter for Hampden. More information should be available by the next Finance Committee meeting. Motion by Councilor Lawlis, seconded by Councilor Ryder to defer action on this item until the next meeting. Vote 7 – 0. Motion passed.
  - b. Bid Results – Riverfront Park – Motion by Councilor McPike, seconded by Councilor Sirois to recommend to the full Council that that contract for the Riverfront Park project go to Maine Earth for the amount of \$248,985 with \$16,602 to be taken from Host Community Benefits and the balance to come from the Chevron Grant. Unanimous vote in favor.
4. New Business
  - a. Fees Ordinance Amendments – Recreation Fees – Motion by Councilor Shakespeare, seconded by Councilor McPike to recommend to the Council that a public hearing be held on the Fee Ordinance Amendments for Recreation Fees.
  - b. Acceptance of Maine Forest Service Volunteer Fire Assistance Grant – Motion by Councilor Shakespeare, seconded by Councilor McPike to recommend to the Council the acceptance of the Fire Assistance Grant with the matching 50% to be taken from the Matching Grants Reserve account in the amount of \$3,640.29. Unanimous vote in favor.
5. Public Comment – None
6. Committee Member Comments

Mayor Duprey suggested that a group photo of the Town Council could be taken and hung on the wall of the Council Chambers. This item was referred to the Services Committee for consideration.

Motion by Councilor Sirois, seconded by Councilor Shakespeare to adjourn at 6:20 p.m.

Respectfully submitted,

Susan Lessard

Town Manager

3-b

# Codification of Town Local Laws and Ordinances: Explained

Presented by

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General Code Publishers Corp.

New York State Association of Towns  
Annual Training School  
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## What is Codification?

Codification is a process of organizing and arranging all legislation of a general and permanent nature into a Code.

Another way to define a code is that it is a "systematic statement of a body of law." A Municipal Code is the end product of the process of research, review, revision and organization of a town's local laws and ordinances into a comprehensive document. A codification must be formally adopted in order to establish it as a permanent and practical system of municipal law.

A Code is similar to state and federal laws that are codified, e.g., McKinney's Consolidated Laws of New York and the United States Code. [Regulations are usually codified as well: the Code of Federal Regulations (CFR) and the Official Compilation of Codes, Rules and Regulations (NYCRR)].

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## Benefits of Codification

The courts have held that "The law, to be just and effective, must be accessible and certain."

The major benefit of a codification is convenient access to information. Having an accurate, up-to-date representation of municipal law enables town officials to answer questions from citizens quickly and accurately. It saves hours of research time when requests for documents are made under the Freedom of Information Law. Certified copies of the Code, once adopted, can be provided to the courts, eliminating the need to copy and certify numerous amendments. Laws can

be enforced with confidence and consistency. The Code helps elected representatives make informed decisions about proposed legislation and enables them to plan for future growth and development. Town officials can have a clearer view of existing situations and the impact of changes and amendments. It clearly defines the rights and responsibilities of all citizens and the powers and duties of municipal officials are clearly delineated for all to see.

A Code can also assist in identifying the social direction in which the community is moving or the shape of the community which is evolving. For example, laws relating to land subdivision now may address concerns of the municipality for the cost of servicing residential lots spread over a rural countryside. In the longer term, the same laws may reflect a concern for protecting the rural economy. In short, they reflect a policy direction.

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### **Types of Codes**

The document produced the first time a municipality undergoes the process of organizing and arranging legislation is called either a "compilation" or "codification." A true codification contains all the elements of organization, review, revision and adoption. A compilation generally only involves the arrangement of legislation and the final product may or may not be adopted as an official body of law.

Once a code is in existence, any future replacement of the original is usually called "recodification."

There are no rules governing how legislation in a Code should be organized or arranged. Legislation may be arranged alphabetically, by subject, into individual chapters, much like the New York Statutes. In some states, ordinances are grouped into chapters arranged together under broad categories or titles, such as "Land Use," "Administration," or "Licenses." The most important guidelines to bear in mind when choosing an organizational structure are:

- Usability - easy access to information
- Amendability - logical arrangement that is easy to understand and maintain
- Flexibility - room to grow or changes with whatever the future brings
- Economy - simple and inexpensive to maintain

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### **Types of Legislation Normally Codified**

Generally, a town code consists of local laws and ordinances of a general and permanent nature. "General and permanent in nature" refers to those laws that apply generally or broadly; they

apply to the entire municipality and they endure and continue until amended or repealed. Occasionally, there are also resolutions of a general nature that could be included in a codification; the usual example being a resolution establishing a senior citizens real property tax exemption, as authorized by § 467 of the Real Property Tax Law.

There are two categories of general legislation:

1. Administrative.

Administrative legislation creates positions or departments of government and defines administrative functions, powers, duties and procedures. Examples:

- A local law to create the position of Town Manager and define his or her powers and duties (Town Law, § 58)
- A local law or resolution providing for the defense and indemnification of municipal officials (Public Officers Law, § 18)
- A local law or resolution creating a municipal Code of Ethics (required by General Municipal Law, § 806)
- A local law defining who can issue appearance tickets and for what violations [Municipal Home Rule Law, § 10, Subdivision 4(a)]

2. Regulatory.

Regulatory or general legislation affects in some way the behavior of the general public. Examples:

- A property maintenance law that establishes minimum town-wide standards
- A peddling ordinance that requires a permit
- A local law prohibiting dogs from running at large
- A Town Zoning Ordinance regulating land use

The following types of legislation are not normally codified: enabling legislation; temporary legislation or annual measures.

A code traditionally does not include enabling legislation (that adopted to carry out a particular activity or event) or legislation relating to a particular person, place or event (e.g., agreements, street acceptances or vacations, appropriation or bond ordinances, salary ordinances or property transfers). A local law to establish general standards for accepting the dedication of all new streets, however, would be classified as "code material" because it is general and permanent in nature.

Temporary measures include building moratoriums or traffic controls established for a particular event or date. Annual measures included budget approvals, the designation of the official newspaper for the year or setting the dates of Board meetings.

The attached document, entitled "Typical Legislative Subjects Found in Codifications," lists those subjects of an administrative and general nature that are typically found in town codes in

New York State, as well as the applicable statutory authorization for each. In addition, those subjects for which state law requires that a town have local legislation have been noted.

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### **Process for Developing a Code**

Codification is basically a five-step process:

- Research
- Organization
- Review and Revision
- Publication
- Adoption

#### Step 1: Research.

The Researcher should:

1. Identify the legislation to be codified
2. Compile a list
3. Collect complete as-adopted copies
4. Verify adoption
5. Check filing of local laws

Identification involves: knowing what to look for and knowing where to find it (minutes, local law books, ordinance books, etc.). It also requires a knowledge of those subjects for which local legislation is typical or mandatory.

A list is important tool to keep track of legislation found during research. It often serves as a convenient checklist to either record where each local law or ordinance is included in the codification or the reason it was omitted.

As-adopted copies are vital; not the copy that was introduced or the draft version. Local laws should be on the proper forms, signed by the Clerk and the municipal attorney and filed with the Secretary of State. The researcher must be sure no pages are missing from copies or lines of type have been cut off in the copying process.

Proper adoption procedures must be verified. Again, the local law form is the most important source of this information. Often the Town Board minutes must be reviewed. If a particular local law was subject to permissive or mandatory referendum, that information must be researched as well. Was a petition filed? What were the results of the referendum?

The researcher should confirm that the local laws were properly filed with the Secretary of State's office. A phone call usually works, or a request for a copy of the local law ledger from the Bureau of Records will suffice.

See the attached document entitled "Summary of Procedure for Adoption and Filing of Local Laws for Towns in New York State".

Step 2: Organization.

Once the legislation to be codified has been gathered, it is organized as follows:

- Legislation is sorted alphabetically or topically
- Similar pieces of legislation are grouped together
- Repealed or superseded provisions are eliminated
- Amendments are inserted where necessary
- A Manuscript is prepared for review

In order to complete the Review stage, it is beneficial to prepare a manuscript or rough draft of the codification. First, legislation should be sorted into like categories. An alphabetical system usually works to group similar pieces together. All legislation relating to animals is placed together; the zoning ordinance or local law and all its amendments are placed together as well. The very activity of reviewing all the legislation as a whole, as part of the sorting process, adds perspective to the process and provides an overview of the town's entire body of legislation and how it is interrelated.

Once similar local laws and ordinances are grouped together, the repealed or superseded items should be removed and amendments inserted where applicable. This process can be a paper process or an electronic one. Extraneous material, such as long titles, preambles and signatures should be deleted. However, it is important at this stage to retain the source document information, i.e., the legislative history (date and enactment number) for each piece of legislation.

Once the manuscript is assembled, it is ready for the Review stage.

Step 3: Review and Revision.

Someone, or a group of individuals or municipal officials, should review the compiled legislation. This type of work is best performed by a professional with a broad-based knowledge of municipal law, codification in general and practical applicability. Specifically, the Reviewer should look for:

- Conflicts, inconsistencies and duplications
- Compliance with statutory requirements
- Conformance to current practice or policy
- Missing information or legislation
- Provisions that could be standardized
- Possible enforcement problems
- Ineffective wording or misleading information

- Practical application
- Current titles of officials and names of agencies
- Other ways to modernize the legislation or its language

It is vital at this stage to read the entire manuscript, and it is often helpful to review related topics together. In doing so, the Reviewer will find that, over the years, during the normal course of legislating, conflicts and inconsistencies have crept into the town's laws. For example, the Reviewer may find that:

- There is a 1962 ordinance on keeping animals that restricts the number of domestic animals to 6 per lot anywhere in the town; yet the 1995 Zoning Law provides that no person shall keep more than 3 domestic animals on any lot outside of the Rural Residential Zone.
- The Subdivision of Land Local Law states that the minimum street right-of-way width is 50 feet, while the Streets Specifications Ordinance provides for a minimum width of 55 feet.
- The Zoning Ordinance prohibits fences which are over five feet, but an older Swimming Pool Local Law requires fences at least six feet in height.
- One section of an often-amended Peddling Ordinance states that the Clerk will process a permit application in 30 days. The next section, never amended, refers to "issuance of the permit at the end of the said twenty-day period."

Duplicate provisions should be identified and weeded out as well. Duplications are the conflicts of the future; they occur when one law is amended and the other is not. For update purposes, duplicate provisions in a Code are more costly to maintain.

The Reviewer needs to know or find out what the state law says about the subject and what type of local legislation is necessary to implement the statute (see document "Typical Legislative Subjects Found in Codifications"). For example, is a local law needed or will a resolution suffice? Certain statutes place requirements and restrictions on municipal legislation; For example, the 1996 state law that authorized a municipality to accept credit cards for payment of fines, taxes, fees, etc., requires that a local law be adopted and that it designate which officers that collect such moneys are authorized to accept credit cards. Some statutes mandate the contents of local legislation or present options that must be chosen. Under Town Law § 271, a planning board can be either 5 or 7 members, and the local law which creates the planning board should designate how many members are on the local body.

If a state law is cited in the legislation; is it the current one or has it been repealed? Part of the review process is to verify correct citations, both internal and external. Additionally, if the applicable state law has been amended since the local legislation was adopted, the Reviewer should look for areas where the local legislation should be updated to conform to the revised statute.

Does the law or ordinance reflect current practice or policy in the town? If not, either the law should be amended to conform to the current situation, or municipal officials should be made aware of necessary behavioral changes.

Codification also offers an excellent opportunity to review fees and charges that may have been altered over the years (often by resolution). Except for certain fees that must be set by local law, the process of developing a Code makes it possible to remove fees from individual chapters and substitute language which authorizes them to be set by resolution of the Town Board; thereby enhancing the permanence of the Code and reducing future maintenance costs.

Places where information is missing must be identified. This includes both required legislation that the municipality does not have (see document "Typical Legislative Subjects Found in Codifications") and missing portions of a law (dropped lines of type or blanks). The Reviewer should look for situations where a law requires a permit, but does not specify an application process; or a law that regulates an activity but does not adequately define it. Many municipalities have experienced difficulties in enforcement where their Zoning Ordinance does not contain clear definitions of permitted uses. An older zoning ordinance that does not distinguish between types of "restaurants" does not protect the community against poorly situated drive-through establishments, and the lack of a contemporary definition of "bed-and breakfast establishment" may unnecessarily prohibit a very desirable use in an area being revitalized.

Codification offers the opportunity to standardize similar provisions found in individual local laws or ordinance, which brings consistency to the Code as a document and consistency to the laws themselves. Most commonly, penalty section language is standardized to provide for current statutory maximum fines and terms of imprisonment for violations.

All legislation, not just zoning, should be reviewed for possible enforcement problems (no definitions or lack of clear directions). Ineffective wording, misleading information, obsolete terminology and confusing language all lead to enforcement difficulties and leave the law more subject to interpretation than does clear, concise wording, in plain contemporary English.

The Reviewer should look for practical application as well.. Does the law work? Is it feasible? Who will enforce it? Are there reasons to keep the law or has the original problem disappeared over time or been solved? What liability accrues if the law is retained but not enforced?

The Reviewer should note ways to modernize the legislation by elimination of obsolete provisions; updating of titles of officials and agencies; and application of gender neutral terminology.

For example, the ordinance on tampering with Victory Gardens and conduct during an air raid is probably no longer needed. An ordinance that establishes hours for use of the town dump is obsolete if the dump was closed 8 years ago. This, however, might lead the Reviewer to question what took the place of the dump? Are there regulations for the recycling center or transfer station regulations that should be codified?

Titles of municipal officials should be updated where appropriate. The Dog catcher is now the Animal Control Officer; the Building Inspector may now be called the Code Enforcement Officer. References to state and federal agencies should be updated as well. U.S. Post Office Department can be changed to "US Postal Service." The DEC used to be called the "Conservation Department."

The code is intended to be used by many people without formal legal training; consequently the application of clear language often involves the elimination of "legalese". Words such as "pursuant to", "heretofore" and certain Latin legal phraseology could be eliminated or changed.

Codification presents an opportunity to update terms such as the following, and to apply other gender neutral language as well:

Workmen's compensation:

- Firemen
- Policeman
- Chairman

Workers' compensation:

- Firefighter
- Police officer
- Chairperson

In short, the review of all laws in one place at one time presents a unique opportunity. It also inevitably brings up problems that must be resolved by the governing body - policy decisions may be needed. Often a meeting or work session is held to go over the Reviewer's findings and suggestions. Decisions on revisions to existing laws, and development of new laws, are made at such a session.

Step 4: Publication.

- Edit the Manuscript:
  - Incorporate revisions approved by the governing body
  - Assign chapter numbers and designate internal subsections
  - Correct internal references; add cross references and footnotes
  - Edit language; correct spelling, grammar and punctuation
- Prepare Manuscript for printing (scan, key or type).
- Proofread for accuracy.
- Prepare comprehensive Index.
- Print and bind paper copies or prepare electronic files.

Once decisions have been made, they must be incorporated into the manuscript. This can be done first on paper or after the manuscript has been made electronic. The actual editing of the Code, which is an extremely detailed process, takes place at this time. All sections and subsections of the legislation are renumbered into the organizational format of the Code, with existing internal cross references corrected and applicable new cross references and footnote references added. All decisions to questions raised by the Reviewer are carried out in the editing: language is changed, duplicate provisions are eliminated; and new provisions are added.

As part of the editing process, standardized wording can be applied in each chapter or provisions applicable to the entire Code, such as general definitions and rules of interpretation or general penalty provisions, can be developed and added; thereby allowing their removal from individual chapters.

The edited manuscript should be captured electronically (scanned, keyed or typed) and then carefully proofed for accuracy. Usually an index is prepared and added, and the Code is printed. Copies of the completed Code must be made available - either paper or electronic versions. Some form of binding is usually necessary, which typically ranges from notebooks to loose-leaf binders to bound volumes. Unlike state law books, approximately 90% of municipal codes are housed in some form of loose-leaf format so that they can be updated easily without the need to republish the entire document or use pocket parts. Serial numbers or some other form of identification should be applied so that a record of distribution can be made. It is vital to annotate the most recent legislation included in the Code so that there are no legislative gaps between the original publication/Code Adoption and subsequent updates.

Step 5: Adoption.

A complete codification process requires the enactment of the Code as the official body of law for the municipality, superseding and repealing prior laws. The revisions agreed to by the governing body must be put into effect legislatively.

A legislative action to adopt the Code is necessary in order to:

- Establish the Code as the official body of municipal law, recognized by the courts; to place it at particular point in time; to give it a place in history; and to provide for a future process of amendment.
- Ratify any substantive or nonsubstantive changes made during the revision process and to give a point in time when the legislation was amended.
- Provide an effective date for the codification and the revisions in order to begin enforcement of new or altered provisions or to begin referring to or amending the new organization and numbering.
- Allow for provisions generally applicable to the entire Code, such as general severability sections, common definitions or general rules of construction; perhaps general penalty provisions applicable to any violation of a code provision.
- Repeal regulatory legislation not included; basically providing a 'clean' codification or a starting point. Specific repealers save time in the future in trying to determine what provisions are really in effect.
- Approve the renumbering and reorganization of the legislation. Ancillary documents, such as tickets, forms, applications, etc., may need to be changed as well.
- Provide for the maintenance of the Code; establish duties with regard to the sale of copies to the public or the process for updating.

Code Adoption Process

- Local law, as authorized by Subdivision 3 of § 20 of the Municipal Home Rule Law.

- If land use revisions are part of the codification: submission to County Planning Board (General Municipal Law, §§ 239-l and 239-m)
- SEQR review (Environmental Conservation Law, Article 8; 6 NYCRR 617)
- Public notice: 3 or 5 days (depending on local procedures) or 10 days if land use revisions are included as part of the Code adoption.

Towns in New York State should adopt the codification by the enactment of a local law under the authority of Subdivision 3 of § 20 of the Municipal Home Rule Law, which provides as follows:

"Every such local law shall embrace only one subject. The title shall briefly refer to the subject matter. For purposes of this chapter, a local law relating to codification or recodification of ordinances or local laws into a municipal code shall be deemed to embrace only one subject. As used herein codification or recodification shall include amendments, deletions, repeals, alterations or new provisions in the municipal code; provided, however, that the notice of public hearing required by this section shall briefly describe the codification or recodification."

The normal local law adoption process for the town should be followed. (See the document entitled "Summary of Procedure for Adoption and Filing of Local Laws for Towns in New York State"); provided that, if land use or zoning revisions were made as part of the codification process:

- The local law should be referred to the County Planning Board for review, as required by §§ 239-l and 239-m of the General Municipal Law
- SEQR requirements must be observed (Article 8 of the Environmental Conservation Law)
- Public notice should be given 10 days in advance of the hearing, in accordance with § 264 of the Town Law.

Copies of the published Code must be on file in the office of the Town Clerk and available for public inspection prior to the public hearing on the Code Adoption Local Law.

The document, entitled "Code Adoption Checklist," enumerates the proper procedures for adopting a codification.

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### **Making the New Code Available**

- Printed Code books in loose-leaf format

Once adopted, a certified copy of the Code should be maintained by the Town Clerk. Often called a "vault copy," this volume serves as a permanent record of the Code contents at the time

of adoption. An updated, current copy should be maintained by the Clerk's office for public inspection.

Copies of the original Code, and subsequent updates should be provided to elected officials and enforcement officers. A copy is often provided to the local library or adjacent municipalities. There may be a need to have copies of the entire Code or selected chapters (such as zoning) available for sale to the public.

When the Code books are handed out, a recordkeeping system must be established, both to facilitate the distribution of updates and to assure that copies are returned when municipal officials leave office. To protect their investment, some towns requires that officials sign a Memorandum of Receipt, which sets forth the responsibilities accompanying receipt of the Code volume.

- Software versions of the Code

The text of the adopted codification can be provided in any number of popular word-processing formats for use by municipal officials on PC's. Alternatively, the text and all necessary programming can be combined into one software package for individual use or installation on the municipality's network. Benefits of the software versions include:

- Accessibility by everyone, regardless of the current software they are currently using for word processing.
- Almost instantaneous search of the entire Code, thus saving hours of time in looking up provisions.
- Protection from inadvertent changes or revisions to the law
- Reduction in the need for multiple printed copies of the Code and their subsequent updates.
- Assurance that the version municipal officials are using is the most current, accurate version of the Code.
- Time and money saved in drafting amendments to the Code.
- Code on the Internet

If the town has a Website, the text of the Code can be placed on the Internet for access by citizens. For examples of municipal codes on the Internet, see the General Code E-Code Library.

- Printed excerpts of individual chapters

Often developers, realtors, attorneys and other citizens need particular ordinances or local laws, rather than an entire Code volume. By selling soft-covered pamphlet copies of popular chapters of the Code, many Clerks have met those needs, with a minimum amount of time and expenditure, while observing the requirements of the Freedom of Information Law.

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## Post Publication

After adoption and distribution, the Code must be periodically updated or it loses its value.

Using a completely up-to-date version of the Code, amendments should be drafted to amend the Code (not the legislation from which the Code was derived). The legislation drafter needs to understand the Code, its organization, numbering system and contents. See the document entitled "Sample Ordinance to Amend the Code."

Regular periodic updates to add recent amendments should be prepared and distributed. The supplementation schedule should be determined by the municipality's needs, based on the frequency and amount of legislation adopted annually. For some towns, annual updates may be sufficient; while for others, there are so many changes being made that the risk of amending an outdated Code necessitates that it be updated after every Board meeting.

The original Code recordkeeping system becomes important again for proper distribution of supplements. New pages should be inserted promptly by each Code holder. A new electronic version should be installed on the network or uploaded to the Internet as soon as it becomes available.

After a few years of routine supplementation, paper copies of the Code should be checked for accuracy. This can be done by comparison to a control volume or a list of correct pages.

A well-developed Codification should last forever. Practically speaking, however, the laws themselves should be reviewed periodically for compliance with changes in local practice and amendments to state law. Recodification may be advisable in the event of a change in form of government, thereby necessitating a complete overhaul of legislation, or in those situations where the original codification was not kept up-to-date and those inevitable conflicts and inconsistencies have appeared. A well-maintained Code is a valuable tool for municipal officials, one that fulfills a community obligation. It is the duty of every citizen to know the law, and it is the duty of the municipality to ensure that its laws are accessible, up-to-date and in a form and location that the average person can find and understand.

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