

Town of Concord

TOWN GOVERNANCE
STUDY COMMITTEE

FINAL REPORT

August 25, 2014



Town of Concord
Town Governance Study
Committee

Final Report
August 25, 2014

Committee Members:

Sara S. Schnitzer, Chair
C. Thomas Swaim, Vice Chair
Edward N. Perry, Clerk
Elizabeth Akehurst-Moore
Margaret B. Briggs
Pamela A. Hill
Paul Horwitz
John Stevens, Jr.
Thomas R. Piper
Herbert P. Wilkins
Carol F. Wilson

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August 25, 2014

Steven Ng, Chair
Board of Selectmen
P.O. Box 535
Concord, MA 01742

Dear Mr. Ng:

I am pleased to submit the Final Report of the Town Governance Study Committee, duly approved and voted at our August 5, 2014 meeting. The Committee, established by the Selectmen in the spring of 2013, has met for the last 15 months pursuant to the charge given to us by the Board of Selectmen. We have reviewed the town charter of Concord and its form of government, evaluating how town governance is functioning and whether any changes would be beneficial.

The Committee embraced seven principles of governance that guided our deliberations and framed our recommendations, based in part on language from the Town's 2005 Long Range Plan. We believe that Concord should have a municipal governance structure and operation that:

1. Enables the town to run efficiently and effectively;
2. Provides adequate communication channels to ensure that the citizenry receives clear, accurate and timely information about the town and school governments;
3. Provides opportunities for dissenting opinions to be heard and valued;
4. Balances the interests, needs, and demand for services of both the town and school officials and constituencies with the taxpayers' ability and willingness to pay;
5. Plans and makes provision for the long-term interests of the town in a sustainable manner;
6. Encourages citizen participation in town government, both in terms of increasing the number of citizens participating and of providing opportunity for meaningful citizen contributions at all stages of the governmental process; and
7. Fosters an atmosphere of trust, respect and cooperation between the town's citizen legislators and the committees and officials who exercise executive authority.

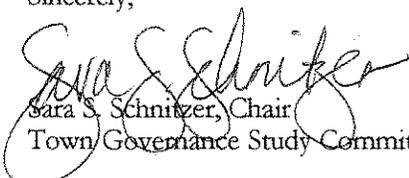
We concluded that Concord is well managed and well governed, providing excellent town services and sustaining a strong financial position. We have affirmed the basic structure of our government while identifying a number of areas where the town can strengthen existing systems and processes that contribute to open, ethical, and effective government; foster an atmosphere of trust; and promote more effective citizen participation. We provide for your consideration some possible amendments to the town charter.

We would like to express our appreciation to the many residents who attended our regular meetings, our public forums in June of 2013, our formal public hearings in June of 2014, or who wrote to us with their thoughts and comments on governance in Concord. We tried our best to listen to their concerns and to respond thoughtfully within the limits of our charge and the law.

We have been ably assisted by Town Clerk Anita Tekle and Finance Director Anthony Logalbo, who helped us with many administrative tasks, attended our meetings, found documents and resources for us, and answered many of our substantive questions.

Concord has a proud tradition stretching back to 1635. It has been an honor for each of us to serve on this Committee, and to offer our thoughts on ways that our town government can best meet the challenges ahead.

Sincerely,


Sara S. Schnitzer, Chair
Town Governance Study Committee

FINAL REPORT OF THE TOWN GOVERNANCE STUDY COMMITTEE

August 25, 2014

I. EXECUTIVE SUMMARY

The Selectmen appointed the eleven-member Town Governance Study Committee (TGSC) at the close of the 2013 Annual Town Meeting, broadly charging it with reviewing “the town charter of Concord and its form of government, [and evaluating] whether any changes would be beneficial to the town.” See Appendix A for the Committee’s Charge from the Selectmen.

The Committee’s recommendations are included in the following three charts:

- **Chart 1 – Recommendations on Town Charter – Affirmation of Basic Government Structure**
This chart lists matters where the Committee voted to recommend no change in the charter (Appendix B).
- **Chart 2 – Recommendations on Town Charter – Items for Possible Update**
This chart lists issues that might be considered for charter change (Appendix C).
- **Chart 3 – Recommendations on Town Governance**
This chart lists recommendations on non-charter matters (Appendix D).

A. Recommendations on the Charter

1. Affirm Town’s basic government structure

The Committee has concluded that the open town meeting/selectmen/strong town manager form of government continues to work effectively in Concord, and we recommend that it be maintained. We believe that the charter’s “strong town manager” structure has served the town well.

We also recommend that there be no change in the number, or term of office, of our elected officials. Concord’s framework of fifteen elected officials works effectively and efficiently for the Town.

Although we are not suggesting any fundamental changes to the structure of Concord’s government, we have made recommendations that will modernize and update the wording of certain documents; clarify where needed the duties and responsibilities of local officials; and document and augment best practices and procedures that are currently observed. These recommendations are in pursuit of open, ethical government, continued accessibility, and the prevention of actions that erode the public trust.

2. No Recall Provision

The Committee recommends that Concord not adopt a recall provision but instead should augment current practices that contribute to open, ethical and effective government and the prevention of corrupt behaviors (*see Chart 1, #5*).

3. Possible Charter Changes

The Committee recommends that the Selectmen consider amending the charter in several areas. On the whole, these changes are for the purpose of modernizing and updating language, rather than to initiate any substantive change in government structure or process. Areas for possible amendment include: updated language describing the powers and duties of the Selectmen and School Committee granted them under the laws of the Commonwealth; updated language describing the roles and responsibilities of the Town Manager; language clearly delineating open town meeting as the legislative body of the town; language to encourage town and school coordination and collaboration; redrafting of the budget sections; integration of gender-neutral language into the charter; language providing for an interim Moderator in the absence, recusal or disability of the Moderator; and various minor corrections (*see Chart 2*).

B. Recommendations on General Governance

1. Principles of Governance

The Committee recommends that the Selectmen adopt a set of governance principles and encourage all elected and appointed officials to follow and foster them. These principles should be readily available electronically and in document form, and should be used as part of the annual training for members of town committees (*see Chart 3, #1*). The Committee recommends that the Selectmen adopt a local statement on ethical standards (*see Chart 3, #2*).

2. Helping Residents Understand How Concord's Government Works

The Committee recommends that the Town improve its web site to provide a better-organized, searchable source of information and up-to-date materials about Concord's government, including such topics as committee history and statutory authority, organizational charts, contact information, committee charges, links to committee minutes, and duties and powers of elected and appointed officials (*see Chart 3, #26 & #28*).

3. Communication and Engagement with Citizens

It is crucial that officials conduct themselves in a manner that upholds and inspires public confidence and respect. The Committee's recommended principles of good government recognize the role that communication and engagement play in fostering a spirit of trust, respect, and cooperation between citizens and officials. These principles call for the fair and open exchange of information, as provided by law; the opportunity for dissenting opinions to be heard and valued; and the encouragement of citizen participation in town government at all stages of the governmental process. Many of our recommendations facilitate, support, and promote these principles (*see Chart 3, #26 through #32*).

4. Best Practices, Codification of Procedures, Lines of Authority

The Town has developed many strong processes and practices, but could do more to codify them. Specifically, the Committee recommends that the Town codify its budget process, finance policies, and procedures (*see Chart 3, #4 & #5*); document and make its long-range planning initiatives more accessible (*see Chart 3, #7 & #8*); establish an Audit Committee (*see Chart 3, #3*); and take steps to ensure that its bylaws, administrative codes, and administrative policies are periodically updated (*see Chart 3, #36*).

5. Committee Governance

The Committee recommends a number of proposals to encourage and assist members of boards and committees in conducting their business in full compliance with the law. In addition, we recommend that all boards and committees utilize systems and practices that contribute to open, ethical government and the full and effective functioning of our democratic traditions (*see Chart 3, #17, #18 and #21 through #25*).

6. Town Meeting

Our charge directed us to consider “the continued viability of the open town meeting concept (but NOT a detailed review of town meeting procedures).”

The Committee unanimously recommends that the open town meeting remain as Concord’s legislative body (*see Chart 1, #1*). We do not support raising the number of signatures needed for a petition article for a town meeting warrant (*see Chart 1, #6*). We do not support a recommendation that the annual town meeting be divided into two sessions (one in the spring for fiscal matters and the other in the fall for general bylaws and zoning bylaws) (*see Chart 1, #8*). The Committee was divided on whether the town should seek legislative approval for a special binding ballot process, before or after town meeting, for occasional high interest items (*see Chart 3, #15*) and recommends that the Selectmen discuss it further.

7. Recommendations on Concord Schools

The Committee’s review of Concord school governance was limited by the fact that town governance and school governance are largely separate under state law. We understand that the issues concerning Concord’s schools are of great importance and interest to our citizens. Our recommendations concerning committee training, distribution of information, and the engagement of residents in the governance process apply to the School Committee. The Committee sent a letter to the Chairs of the School Committees, a copy of which is included as Appendix V. See Section V-G of this Report for additional discussion about Concord Schools.

II. THE COMMITTEE AND THE PROCESS

The Committee has met regularly since its first meeting in May of 2013. Our process has been robust and has offered many opportunities for public comment. Within weeks of our first meeting, we hosted two public forums (listening sessions) to hear what governance issues were of interest to residents. In addition to the two public forums held in May 2013, we held 32 working meetings, and hosted two formal public hearings to hear comment on our draft preliminary recommendations in June of 2014. Members reviewed the charters of other communities and visited communities that

have recently reviewed their charters or whose charters or form of governance were of particular interest to us. Other members of the committee have interviewed various elected and appointed officials. We have included a list of these interviews in Appendix E. Summaries of these interviews are included in Appendix F and Appendix G. The Committee sent a survey to current chairs of all town committees as well as to all former selectmen, the results of which were compiled and are included in Appendix H and Appendix I. Numerous emails and letters have been received from citizens, and a number of residents have regularly attended our meetings, all of which have been advertised and open to the public. We have reviewed various town documents and practices, including but not limited to the Comprehensive Long Range Plan (2005) and the Final Report of the Town Meeting Study Committee (1996).

At one of our public hearings, which was televised live from the Town House hearing room, we provided an email feed so that citizens watching from home could send in comments or questions “in real time” for the Committee’s consideration. While the response was limited, the input was appreciated by the Committee and the citizen correspondents expressed appreciation for the new avenue for comment.

In addition to the eleven-member Committee’s regular meetings, several smaller working groups met to conduct research or draft preliminary proposals for the full Committee to consider. See Appendix J for a list of these working groups. All these preliminary working documents were made available to the public at the Committee’s meetings. While many of the Committee’s recommendations will require considerable additional effort before they can be implemented, the Committee has included in its meeting documents and in the Appendix of this report many of the working documents it developed. These may provide assistance to those who succeed us.

III. HISTORY OF CONCORD’S GOVERNANCE & CHARTER

A community’s charter should establish the form, structure, and organization of a city or town government, including the powers and duties of the senior or key officials. The charter is somewhat like the constitution of a city or town. Of course a town is also subject to numerous state and federal laws, as well as local bylaws, regulations, policies, and procedures that are not part of the charter.

Prior to the 1950s, Concord operated without a charter, as did most small towns in the Commonwealth. In the late 1940s Concord had a population of just over 8,000, roughly half of whom were registered voters. The town was governed by a three-member Board of Selectmen, and numerous elected and independent officials and committees. Society was rapidly changing in the United States in the 1940s and 1950s, and twelve municipalities in Massachusetts adopted charters that established “town manager” forms of government. Concord was one of them. Excerpts from a narrative concerning the adoption of Concord’s charter authored by former Selectman Arthur L. Stevenson in 2001 appears in Appendix K.

In Concord, this new form of government reduced the number of elected entities to just three—a Board of Selectmen, a School Committee, and a Moderator—and maintained an open town meeting, putting responsibility for the day-to-day responsibilities of managing town government in a professional town manager. Concord’s so-called “strong town manager” charter became effective in 1956 (see Appendix L for a copy of Concord’s Charter). Since its initial passage, the charter has had

nine individual amendments, all voted at Town Meeting, and subsequently approved by the Legislature or at the ballot (see Appendix M for a detailed listing of these amendments).

Appointment of the Town Governance Study Committee has provided an opportunity for the first comprehensive review of the town charter since its adoption, including whether changes are needed in light of the growth in the Concord community and the many societal changes over the last fifty years.

Twenty-first century Concord is a very different place from Concord of the 1950s—larger in population (now over 16,000); with a strong and evolving mix of businesses, but less industry and agriculture; dynamically connected to the greater world by the internet and social networking; subject to changing expectations of government; and offering town services that were not imagined in the decade after World War II. Property values have soared, and trends in housing stock have changed. We have been affected by sweeping changes in federal and state requirements for public education, the environment, public health, land use regulation, open government, and business. There have been cycles of economic growth and times of economic challenge. In most years there have been budget uncertainties at the state and federal level. Concord's government has, of necessity, responded to these and other changes and challenges over the years.

These positive observations are not the whole story. There are strong voices in the community expressing concerns about such important matters as:

- The limitations of open town meeting, particularly whether town meeting effectively disenfranchises voters who are unable to attend town meeting;
- A perceived lack of transparency and accountability in certain areas of government; we heard concerns specifically about the school administration and school committee's perceived lack of responsiveness to citizen questions and concerns;
- Whether the town should have a recall provision for elected officials;
- How the town can take advantage of advances in technology to improve the effectiveness of Town operations and to allow more effective "two-way" communication and engagement with residents.

We heard these concerns at our public forums and meetings, and in correspondence. Some of these issues are within our charge, and some are not.

IV. RECOMMENDATIONS ON THE CHARTER

The Committee's recommendations are summarized on the Charts in the Appendix and are discussed in the following pages.

A. Affirmation of the Basic Government Structure (Selectmen/Open Town Meeting/Strong Town Manager)

1. The Committee recommends that Concord retain its basic town government structure with an open town meeting open to all registered voters of the town; a five-member board of selectmen; and a strong town manager (*see Chart 1, #1*).

The Committee considered what, if any, changes in its basic government structure would benefit the town. Under our charter, we have eleven elected officials: five Selectmen, five School Committee members, and one Moderator. We also elect four members of the Concord Housing Authority, which is a separate, non-town entity under state statute. If these four elected officials are counted, Concord has fifteen elected officials. Our legislative body is an open town meeting.

There are 351 cities and towns in Massachusetts, and because of the independence offered through the Home Rule Amendment process, each community can craft the specifics of its governance structure through its charter, within certain limits. The Committee looked at materials describing various models of municipal government in the State (available from the State, the Mass Municipal Association, and the Massachusetts Municipal Management Association). The Committee also reviewed charters from various towns that are generally considered comparable to Concord. The Committee looked at the similarities and differences; for example, how town charters delegate powers and duties, which elected and appointed committees were described, which had recall provisions, and which had open town meeting or representative town meeting. Some of this comparative data is included in Appendix N.

Cities are normally governed by a city council/mayor or manager form of government. Towns have the following choices: (1) an elected town council/manager form of government (only in communities with a population larger than 12,000), wherein legislative action is taken by the town council; (2) a board of selectmen/representative town meeting model (where at town meeting only elected members may vote)¹; or (3) a board of selectmen/open town meeting which is open to all registered voters. See Appendix O for an overview of forms of government options in Massachusetts.

Towns using a board of selectmen model may use their charters to delegate certain authority to staff. Some towns have boards of selectmen that retain most of the authority given them under state law, and who hire "administrative assistants" or "executive secretaries" to carry out some day-to-day responsibilities. Others, like Concord, delegate substantial authority to a town manager and a professional staff. Since the 1950s, Concord has been a community with a so-called "strong town manager" form of government, with substantial delegation of authority to a town manager.

The Committee considered whether any other form of government would be better for the Town and concluded that Concord is generally well-managed and well-governed, providing, on the whole and over many years, excellent town services and a strong financial position. The charter's "strong town manager" framework has encouraged professionalism in our municipal staff that has served the Town well, and we have been fortunate to have had many capable leaders in elected and appointed positions. The town is respected among its peers in many areas, including public safety, public works, open space preservation, historic preservation, public health, land use planning, education, library, and municipal light plant. Concord

¹ Non-town meeting members may attend and address the meeting, with the Moderator's consent (town meeting members may vote to overrule if the Moderator declines to grant consent).

has maintained a strong fiscal position with a “Triple A” bond rating, cash reserves, and tax revenues sufficient to fund excellent town and school services.

See Section V-F for additional discussion about town meeting.

2. The Committee recommends no change in the number or term of office of our elected officials; namely, a five-member board of selectmen elected to staggered three-year terms; a five-member school committee elected to staggered three-year terms; and a moderator elected annually to a one-year term (*see Chart 1, #2*). State law limits terms of the selectmen and school committee members to a maximum of three years. The current three-year term assures that one or two members are elected each year. This provides, in our opinion, sufficient opportunity for turnover and voter choice. The Committee considered whether to increase the Moderator’s term to three years, but voted not to do so. State law provides only two options for Moderator – one-year or three-year terms, and although the current Moderator asked the Committee to consider a term longer than one year, the Committee concluded to propose no change.
3. The Committee recommends no change in the charter provisions for filling vacancies on the Board of Selectmen or School Committee (*see Chart 1, #3*).

The charter provides that a vacancy on the Board of Selectmen or School Committee be filled by a special election, unless the vacancy occurs less than one hundred days prior to the annual election and at least three members of the board or committee remain in office, in which case, the vacancy remains unfilled until the annual election. The Committee found this process to be sufficient.

4. The tradition of Selectmen and School Committee members limiting themselves to two terms has served the town well; the Committee recommends that it not be codified in the charter (*see Chart 1, #4*).

The “Town Board, Committee and Task Force Appointment Policy” (APP #10) was adopted in 1979 and amended in 1998 and 2012. It outlines numerous practices, duties, and responsibilities relative to appointed town committees. Section VII of APP #10 provides that “those appointed to a three-year term as a full member of a Committee shall be limited to two (2) full consecutive terms.” Certain limited conditions are spelled out for the rare case when a member is considered for appointment beyond the two terms. This tradition flows from a recognition that fresh faces bring fresh points of view and a longstanding intention to prevent Concord’s governance from remaining in the hands of a few. APP #10 is included in Appendix P.

While this APP does not apply to the elected officials, there has been a long-observed tradition of Selectmen and School Committee members limiting themselves to no more than two full terms. Although there have been rare exceptions, this tradition seems to have served the town well, and is observed consistently enough that it need not be codified.

5. The Committee recommends no change in the committees that are listed in the charter (*see Chart 1, #9*). See Appendix Q for the appointing authority for committees and boards prior to adoption of the charter.

We were specifically asked to consider whether to recommend any additional elected officials, or whether to suggest any other changes in the appointment process for boards and committees.

Towns in the Commonwealth set up their committee and board structure in different ways. Some communities have many elected boards, while others have very few. The number of elected officials is generally correlated to a community's accepted form of government. Those with many elected boards and officials often have retained a more decentralized form of government, with separate groups operating independently from each other, without shared goals or resources, and with independent operating standards and practices. Generally speaking, towns with a "strong town manager" form of government have fewer elected officials, and have a system where the town manager and the board of selectmen each appoint certain committees needed to govern. In some cases, state law dictates the appointment authority of specific committees.

The Committee applied several different sorting approaches to try to offer an underlying rationale for what committees should be listed in the charter, which should be appointed by the selectmen, which should be appointed by the town manager, and to consider whether to change the charter to switch one or more currently appointed committees to elected committees.

We observed that most committees mentioned in the 1956 charter were listed there because each was an elected committee that, if it were to remain in existence under the new charter, would need to be appointed. Therefore, at the time the charter was enacted, each needed to be mentioned. The Committees currently mentioned in the charter are: the finance committee; trustees of town donations; board of registrars; board of assessors; personnel board; the planning board; the zoning board of appeals; the library committee; and the public ceremonies and celebrations committee. After some debate, and with no clear consensus for adding or deleting, we are not in a position to recommend a change in this list.

6. The Committee recommends no changes in the appointment process or term for any town committee or appointing official (*see Chart 1, #7*).

The charter, in establishing a "strong town manager" form of government, delegates to the town manager the authority to appoint all officers, boards, committees, and employees of the town except for those otherwise provided in the charter or bylaw. We recommend this construct remain, which results in the following:

Moderator

- Appoints the Finance Committee, offering voters a fundamental check and balance on the finances of the town
- Appoints the Minuteman Regional School Committee Member (by Regional Agreement)

Town Manager

Appoints these committees, with appointing authority stipulated by state law:

- Historical Commission (Town Manager with approval of BOS)
- Natural Resources Commission (Town Manager with approval of BOS)

Appoints these committees with functional unit responsibilities:

- Board of Health
- Municipal Light Board
- Public Works Commission
- Recreation Commission
- Board of Assessors (with approval of Board of Selectmen)
- Cemetery Committee
- Sustainable Energy Committee
- Council on Aging

Board of Selectmen

Appoints these committees that are responsible for fundamental protections:

- Board of Registrars – Membership and appointment authority stipulated in statutes
- Planning Board – charter provides for appointment by BOS
- Zoning Board of Appeals – appointment by BOS stipulated in statute unless otherwise provided in charter

Appoints these committees as provided in state law or agreement:

- Cultural Council/ Chapter 970 of the Acts of 1979
- Historic Districts Commission/Chapter 345 Acts of 1960
- Hanscom Field Advisory/Chapter 290 of the Acts of 1980
- HATS/ Memorandum of Understanding with other towns signed in 1988
- MAPC representative/ Chapter 668 of the Acts of 1963
- MBTA representative/MGL Chapter 161A Section 7A
- SUASCO River Stewardship Council/The Council is advisory to the National Park Service, with appointment authority stipulated in federal statute.

Appoints boards and committees to advise selectmen in their responsibilities as the policy makers of the town. These include long-standing committees as well as ad hoc committees convened to explore “topics of the hour.” Often these are created through citizen request, town meeting action, or selectmen initiative. We recommend that the Selectmen review this list of committees every four or five years, to affirm the continued need for the committee, to adjust the charge as needed, and to affirm that the appointment authority should remain with the Selectmen.

- Library Committee
- Personnel Committee
- Records and Archives
- Agricultural Committee
- Bruce Freeman Rail Trail Committee
- Community Preservation Act
- Public Ceremonies and Celebrations Committee

- Local Option Local Income Tax Committee
- Tax Relief Committee
- 2229 Main Street Committee (dealing with superfund site)
- White Pond Advisory Committee
- Conservation Restriction Stewardship Committee
- Hugh Cargill Trust – advises the Selectmen on distribution of funds to needy recipients
- Youth Coordinator Advisory Committee.
- Cable TV committee – advisory to the Selectmen in compliance with Cable TV licensing agreements. The Selectmen issue the license in accordance with state law.

A full list of committees and appointing authority is included in Appendix R.

B. Recall Provision

The Committee recommends that Concord not adopt a recall provision but instead augment current practices that contribute to open, ethical and effective government and the prevention of corrupt behavior (see *Chart 1, #5*).

The Committee discussed the idea of a recall provision at length over several meetings. In arriving at this recommendation, the Committee studied recall provisions and practices of other towns, the results of practice-based research, and feedback from residents and town officials. The Committee welcomed and received considerable public comment in writing and at our working meetings prior to our vote. In our interviews with town officials and others, there was mixed sentiment (in favor of, ambivalence about, and opposition to) a recall provision. The experience of other towns and the academic research are inconclusive as to whether the possible benefits offset the downside risks. This is perhaps reflected in the fact that, as of 2002, the MA Department of Housing and Community Development counted 150 Massachusetts communities out of 351 (43%) that had recall provisions for elected officials; 57% did not. (Further information about the issue of recall, including what provisions are typically included, is provided in Appendix S.)

Scholarly investigations are inconclusive as to whether recall provisions have a net positive impact on the behavior of elected officials and the quality of their decisions. A primary argument advanced by supporters of recall is that it is important to true democracy and will encourage elected officials to hear the wishes of the electorate and to be responsive to them. However, there is some concern that the threat of recall may reduce the quality of decisions by elected officials by increasing the pressure to listen to the loudest voices, to focus on short-term interests at the expense of long-term interests; or to cater to the interests of a subset of vocal citizens. It may discourage citizen willingness to serve on politically “hot” committees. A recall provision opens the possibility that a small number of unhappy residents may initiate recall proceedings against officials who operated in good faith and within the law, but made unpopular decisions. Recall proceedings may be divisive within the community as well as harmful to the individual and the individual’s family.

While there are credible arguments in favor of recall, the Committee unanimously voted to recommend that the town not adopt a recall provision. We noted that elected officials are already subject to the State Ethics and Conflict of Interest laws, the Open Meeting Law, Public Records law, and all criminal laws of the Commonwealth, each of which has avenues to challenge the actions of officials. A regular, recurring three-year cycle of local elections provides the opportunity to assess the performance of elected officials. The strong norm that individuals not serve on a committee for more than two consecutive terms lessens the risk of an entrenched member, board, or committee. With five-member boards, no one elected official can dominate the actions of the committee. In the case of the Moderator who serves alone, the term of appointment is only one year.

As an alternative to recall, the Committee embraced recommendations to strengthen preventative systems and processes that contribute to open, ethical, and effective government, including statutes on public records, open meetings, conflicts of interest, codes of ethics, mandatory information disclosure; and internal controls, most of which offer avenues for citizen inquiry and complaints. The Committee has made a number of recommendations to augment the town's current practice. (see Chart 3, #1 through 6; #17, #18 and #21 through #25)

C. Topics To Consider for Charter Change

In Section IV-A and IV-B we describe areas where the Committee recommends NO change in the charter. In Section IV-C we discuss topics where some change in the charter might be advised. These include:

- A description of the roles and responsibilities of the town manager
- A description of the roles and responsibilities of the board of selectmen
- A description of the powers and duties of school committees, given to them under the law of the Commonwealth.
- A statement that open town meeting is the legislative body of the town
- A simplified description of the budget process - removing some detail and putting it in a local bylaw
- A provision encouraging town and school coordination and collaboration
- Integration of gender-neutral language
- A provision for the deputy moderator elected at the annual town meeting to act as moderator in the absence, recusal, or disability of the moderator
- Two housekeeping changes proposed by the 2006 Bylaw Recodification Committee

The Home Rule Amendment to the state's constitution provides several routes for revising a charter. The role of our Committee is well stated in a paper posted on the Division of Local Services web site:

"Once a community has a charter, there is often a provision for the periodic appointment of a charter review committee. The committee undertakes an examination to determine the charter's ongoing utility and accuracy. Such committees do NOT have the powers, duties, and responsibilities of an elected charter commission. Such committees are formed to review the charter and to make recommendations to its appointing body (e.g., board of selectmen or city council) regarding the need for additions, deletions, clarifications, or other amendments that would improve the charter. The term for such an advisory committee is usually one year. Recommendations

of the committee may take the form of a proposed special act or a proposed charter amendment, but the local legislative body must act upon the recommendations before they take effect. The committee may also find, for example, that the charter's intent is clear, but related bylaws or ordinances may need clarification. The role of such committees can be important in assuring that the charter is working as intended, but the charter review committee has no assigned role in achieving any change beyond its recommendation to its appointing body².

A summary of the charter amendment process is included in Appendix T.

The Committee deliberated over several meetings whether to recommend to the Selectmen changes to the charter, whether those changes were urgent, and whether, if changes were needed, to simply amend or to completely rewrite the charter.

The Committee was divided in its opinions. Much of our debate centered on whether to retain the style and structure of the 1950s "minimal" charter, relying on other documents (state statutes, local bylaws, administrative codes and administrative policies & procedures, etc.) to provide additional detail – OR whether to recommend a full revision of the charter so that the document would be all-inclusive and more modern. In either case, sections of the existing charter which are no longer relevant could be deleted (those pertaining to the transition from the pre-charter form of government to the strong town manager form of government).

We wrote and considered illustrative language for possible charter changes within two possible redrafts of the charter – one that proposed a limited number of targeted amendments to the existing charter without proposing a full rewrite, and one that reorganized the charter more fully. These two drafts were not intended as a final proposal to the Selectmen, and it was acknowledged that a full public process and review of language by town counsel would be needed if and when the Selectmen decide to amend the charter, but the two approaches were helpful to the Committee as illustrations. In the end, neither of these approaches nor the specific language gained the support of the Committee.

A majority of the Committee concluded that a total rewrite of the charter was not warranted at this time, since the nature of the Committee's recommendations does not change how Concord is governed. At the same time, a majority felt that the Selectmen should consider the topics we identified and should themselves decide whether and when to propose amendments to the charter. The Committee thus decided to offer the Selectmen a list of topics that might be considered for charter change (*See Chart 2*).

The Committee recommends that the Selectmen consider the following possible changes in the Town Charter:

1. Further delineation of duties of town manager (*see Chart 2, #1*)

While there are many variations among communities, the elements and functions that are generally considered for delegation to the town manager under a "strong town manager"

²<http://www.mass.gov/dor/local-officials/dls-newsroom/ct/charting-a-route-for-charter-change.html>

form of government are the authority for hiring and firing, making certain committee appointments, budget management, ability to enter into a contract on behalf of the town, purchasing, labor contract negotiation and approval, reorganizing departments, and management of town property. Like other “strong town manager” towns, our town manager has been delegated authority for these responsibilities, in language written in the 1950s that is sound and sufficient but not as complete as it could be. We do not suggest any substantive change in this delegation of authority, but we do suggest that at some point the Selectmen consider some clarification and updating of language regarding the town manager’s authority. Some areas to consider would include:

- delegating authority to the town manager in all matters authorized by state law (currently or as may be authorized by future legislatures);
- delegating responsibility for supervising and directing all town employees, including union and non-union employees, except those employees under the jurisdiction of the School Superintendent;
- delegating responsibility for ensuring that all appointed boards, committees, and officers of the town (except for those appointed by the School Committee) comply with applicable laws;
- delegating responsibility and authority to establish and enforce rules consistent with town policies and designed to ensure the efficient and effective administration of the town;
- delegating responsibility for fair and impartial administration of personnel policies and practices; and
- delegating responsibility for financial and programmatic long-range planning for departments under the manager’s jurisdiction.

We heard some individual concerns about the “strong” town manager function – ironically one or two residents felt that the Selectmen were too strong, and one or two felt the Selectmen yielded too much to the Town Manager. Our observation is that the Selectmen hold the Town Manager accountable for the day-to-day operations of the town.

2. Further delineation of duties of selectmen (see Chart 2, #2)

When the charter was first written, the powers and duties retained by the selectmen were either dictated by state law or obvious to the original authors. Over the last 60 years, many powers and duties of selectmen have evolved under state law. We recommend the Selectmen consider adding a general statement to the charter referring to the powers and duties of the Selectmen given to them under the law of the Commonwealth, some of which they have delegated to the town manager.

3. Reference to the duties and statutory authority of school committees (see Chart 2, #3).

Under state law, authority for most school matters is given to school committees and administrators, or reserved for the State Department of Education. Moreover, Concord belongs to two regional school districts (CCRS and Minuteman) that are governed by regional agreements. The town charter determines the size and terms of the School Committee, and town meeting approves town budgets and school budgets. The Selectmen and the School Committee have distinct and separate lines of authority. The Committee, with advice from Town

Counsel, wrote and adopted a memo on the scope of the Town's, as distinct from School Committee's, authority to address school related issues of concern to citizens. This document can be found in Appendix U. A letter sent to the School Committee from the Committee on July 9, 2014 may be found in Appendix V.

The Committee recommends that, at such time as the charter is amended or rewritten, it include a brief reference to the powers and duties of the School Committee, under the law of the Commonwealth. The addition of this language may make the charter more complete and may help to clarify for voters that school committee authority derives largely from state law, and not from the charter.

4. Mention Open Town Meeting as Concord's legislative body (see *Chart 2, #4*).

When the charter was adopted in 1956, Concord's population was such that retaining an open town meeting form of government was the only available option under Massachusetts law. With Concord's population now over 16,000, other options are possible, and we feel that a simple statement in the charter that open town meeting is Concord's legislative body is appropriate.

5. Simplify sections 16 & 17 of charter referring to the budget, moving most details into a new budget bylaw (see *Chart 2, #5*).

Moving these details into a budget bylaw (which requires a town meeting vote, but is simpler to amend than the charter) will provide the Town and School Committee with needed flexibility to respond to changes in state laws, town calendars, and time constraints.

The Town's Bylaw Recodification Committee of 2006 noted that some dates and timeframes for the budget process as laid out in the charter are no longer accurate and do not fit with current practice. We have concluded that including the details of the budget process in the charter would make the charter too constraining. Town meeting and public hearing dates change, along with the necessities of a more complex budgeting process. We believe that the Town's long-term interests would be served by revised charter language that accomplishes the following:

- (1) provides a clear structure for the budget process;
 - (2) provides for the authority, roles, and responsibilities of the Selectmen, the School Committee, the finance committee, and the town meeting in that process; and
 - (3) refers to a budget bylaw for details of timing, contents of the final budget documents, hearing schedules, etc.
6. Include a provision in the charter encouraging town and school coordination and collaboration (see *Chart 2, #6*).

The Committee recommends that when the charter is amended or rewritten, it include a statement encouraging effective cooperation and collaboration among the Selectmen, School

Committee, Town Manager, and School Superintendent, to promote economical and efficient government.

7. Address gender-neutral language in charter (and other town documents) to include his or her, or gender-neutral language throughout (*see Chart 2, #7*). The Committee considered whether the name of the Board of Selectmen should be changed from “Board of Selectmen” to the gender-neutral name “Select Board,” but this motion did not carry.
8. Include two housekeeping changes proposed by the 2006 Bylaw Recodification Committee, which are as follows (*see Chart 2, #8*):
 - Section 2(B)(1): delete reference to periodically reviewing and revising the building code of the town. In 1972, the Legislature adopted a statewide building code, which superseded all local building codes in Massachusetts.
 - Section 21: Change from “sixty” to “one hundred twenty” the number of days prior to an annual town meeting when a petition must be submitted to revoke acceptance of the charter. While it is unlikely that there would be any such petition within the foreseeable future, the Committee notes that warrants for annual town meetings are typically closed about 110 days prior to the dates of those meetings.
9. Include language that in the absence, recusal, or disability of the moderator, the deputy moderator elected at the annual town meeting shall act as moderator; and if the position of moderator is vacant, the deputy moderator shall have all the powers and duties of the moderator for the balance of the moderator’s term (*see Chart 2, #9*).

Since the moderator is elected annually, and the principal responsibility of the moderator is town meeting, a majority of the Committee members feel that a vacancy in the position does not warrant calling a special election. The Committee recommends that unless and until the charter is amended, that the above language be incorporated into the moderator’s “Town Meeting Traditions and Procedures” document, which is updated annually.

V. RECOMMENDATIONS ON GENERAL GOVERNANCE

A. Principles of Governance

Much has been written about governance, and what constitutes “good governance.” Governance refers to the rules, structures, traditions, and institutions by which authority is exercised and under which those in authority are held accountable. One simple definition: “Effective governance ensures that objectives are realized, resources are well managed, and that decision makers are transparent and accountable.”³

³ <http://iog.ca/our-business-lines/public-sector-governance/>

The term “governance” encompasses the mechanisms and practices used by organizations (including governments) to govern themselves, to determine policies, procedures, principles, and standards and to ensure that representatives follow them. For a municipality, these mechanisms at their best provide for a well-governed town; well-managed resources; transparency and accountability by establishing clear lines of authority; monitoring, and recording what is going on; taking steps to ensure compliance with policies, procedures, principles, and ethical standards; and providing for corrective action when rules and principles are not followed.

The authority and practices of Concord’s governance structure and traditions flow from a variety of sources, not just from our charter, local bylaws, and administrative codes. State and federal regulations must be observed, and authority to govern generally flows from those higher laws. For example, every official or department in the town must abide not only by town rules and bylaws, but also by the statutes that delegate authority to them and regulate their functions, whether it be the Selectmen observing the state’s laws when granting a liquor license, a police officer when initiating a traffic stop, or the building inspector when enforcing a building code. State statutes also set out clear requirements for such crucial “good governance” building blocks as the Open Meeting Law, Public Records Law, and Ethics Laws, which apply to all local officials.

At the local level, there are numerous bylaws, administrative codes, and administrative policies and procedures that spell out in some detail such matters as how committees operate, and procedures to be followed for many diverse and sometimes nearly invisible functions of government; e.g., the use of town vehicles or procedures governing the use of recycled materials.

The Committee recommends that the Selectmen consider adopting a set of governance principles and foster adherence to them by all elected and appointed officials, making them widely available, and part of the annual training for members of all town committees (*see Chart 3, #1*). We suggest the following principles:⁴

Concord should have a municipal governance structure and operation that:

1. Allows the town to run efficiently and effectively;
2. Provides adequate communication channels to ensure that the citizenry receives clear, accurate and timely information about the town and school governments;
3. Provides opportunities for dissenting opinions to be heard and valued;
4. Balances the interests, needs, and demand for services of both the town and school officials and constituencies with the taxpayers’ ability and willingness to pay;
5. Plans and makes provision for the long-term interests of the town in a sustainable manner;
6. Encourages citizen participation in town government, both in terms of increasing the number of citizens participating and of providing opportunity for meaningful citizen contributions at all stages of the governmental process; and
7. Fosters an atmosphere of trust, respect and cooperation between the town’s citizen legislators and the committees and officials who exercise executive authority.

The Committee also recommends that the Selectmen adopt a statement on Ethical Standards, probably as an APP or bylaw (*see Chart 3, #2*). This statement would supplement and complement exist-

⁴ Based in part on language from the Town’s March 2005 Long Range Plan

ing state laws on such matters as ethics, public records, open meetings, conflicts of interest, and campaign regulation. It would express that all elected and appointed officers, employees, and volunteers of the Town are expected to demonstrate the highest ethical standards in the performance of their duties so that the public has trust and confidence in the integrity of its government. A sample statement is included in Appendix W. The Committee was divided (5 to 5) whether this statement should be included in the charter.

B. Helping Residents Understand How Concord's Government Works

Many layers of government rules and regulations seem opaque to residents and lead to many questions. Why do we have a municipal light plant when most other towns do not, and why is it run like a business? Why is our library structure different from most towns? Why is the school budget voted differently from the town budget when it is so much larger?

We found that there are answers to most questions, but for the citizens who may be unfamiliar with municipal government, the process can be time-consuming and may require finding the right person with the information. The Committee recommends that the process for obtaining information be made more user-friendly.

1. The Committee recommends that the Selectmen create and maintain an interactive electronic document “Explaining Concord's Town Government.” This would be a well-organized, searchable electronic document, tentatively titled “Explaining Concord's Town Government” that could include such topics as (*see Chart 3, #26*):
 - overview of Concord's government
 - organizational charts
 - phone numbers, contact information
 - links to minutes and documents
 - town meeting as a legislative body—history and practice
 - duties and powers of elected officials
 - statutory authority of schools
 - history and governance of Concord Free Public Library
 - history and governance of Concord's Municipal Light Plant
 - description of Enterprise Funds and how they work
 - description of all committees; including their authority or charge, their work products, their practices and policies, etc.
 - committee handbook, including how to run a meeting and how to run a public hearing
2. The Committee recommends that the web site be modernized and kept up to date, with links connecting each committee and department web page to updated committee charges, statutory authority, history, etc. On each committee and department web page, have a button for “About This Committee” where updated committee charges, statutory authority, history, minutes, etc. would be available (*see Chart 3, #28*).

C. Communication and Engagement with Citizens

It is crucial that all elected and appointed officials in Concord conduct themselves in a manner that upholds and inspires public confidence and respect. The Committee's suggested principles of good governance (*see Chart 3, #1*) embrace the role that communication and engagement plays in fostering a spirit of trust, respect, and cooperation between citizens and officials. These principles call for the fair and open exchange of information, as provided by law; the opportunity for dissenting opinions to be heard and valued; and the encouragement of citizen participation in town government at all stages of the governmental process.

The Committee thought a lot about ways to enhance our current practices of communication and engagement. Residents and others are entitled to information in a timely and respectful manner. Town and school officials and committees should continue to be creative in providing opportunities for "two-way" information exchanges, with timely and accurate information going out to residents as well as opportunities for residents to engage through the use of social networking and other evolving technology (*see Chart 3, #16, #26 through #32*). This effort, we recommend, should include the following actions:

1. The Selectmen and Moderator consider innovative ways to engage Concord citizens in the town meeting process through the use of social networking and other evolving technology (*see Chart 3, #16*).
2. The Selectmen, in cooperation with the School Committee and Moderator, establish a technology committee charged with examining and recommending actions concerning the increased use of information technology in town governance (*see Chart 3, #27*).

The Committee had a particularly lively conversation about the exciting possibilities for new and innovative use of technology in town governance, and these first two recommendations flow from that conversation. It is clear that the capabilities and applications for communications through technology may soon change the way we do many things. But technology also poses unique challenges for municipal governments, whose budgets are limited and who must carefully consider the ramifications of new technologies within the framework of existing statutes such as the Public Records Law and the Open Meeting Law. It is difficult from a budget perspective for the Town to be on the cutting edge of new technologies – and it is often difficult from a legal perspective as well. Whether this technology committee is a short-term task force or becomes a standing committee to advise the Town on an ongoing basis, we feel this area is a critical one on which the Selectmen should focus some attention.

3. The Town expand CCTV coverage and online streaming of key committee meetings (*see Chart 3, #29*).
4. The Town place printouts of the Town Manager's Weekly Reports and News & Notes on bulletin boards at the Town House, Harvey Wheeler Community Center, both Libraries, the Beede Center, and Peter Bulkeley Terrace (*see Chart 3, #30*).
5. The Town publicize and make available handouts that describe the hearing procedures used by regulatory committees such as the Planning Board, Board of Assessors, Natural Re-

sources Commission, Historic Districts Commission, Board of Health, etc. (*see Chart 3, #31*). While this is currently being done by some of these regulatory boards, the Committee urges that it be expanded.

6. The Selectmen, School Committee, Town Manager and School Superintendent increase their efforts to engage with residents in two-way communication (*see Chart 3, #32*). For example, the town officials could:
 - Utilize local media to highlight one town committee per month, and publish a monthly column by the Town Manager and the Selectmen.
 - Host a town government fair, “state of the town” meeting, and town hall forum for Q&A on a periodic basis.
 - Host live streaming and online Q&A sessions with town officials, such as the Town Manager, School Superintendent, Finance Director, Board of Selectmen, School Committee, Town Moderator, Town Clerk, etc.
 - Support middle school and high school curriculum and programs that continue to foster appreciation of local government.
7. Due to the central role of the libraries in our community, and many questions visitors ask about the operations of the library, the Library make available a pamphlet describing the various library groups and how they operate (*see Chart 3, #33*).
8. The Library, which has been innovative over the years in the use of technology, continue to pursue technological advances (*see Chart 3, #34*).

D. Best Practices, Codification of Procedures, Lines of Authority

While we are not suggesting any fundamental changes to the structure or foundation of Concord’s government, we have made several recommendations that we believe will update and modernize certain documents; clarify, where needed, the duties and responsibilities of local officials; document best practices and procedures that are currently observed; and augment those strong practices where needed. All these recommendations are in pursuit of open, ethical government, continued accessibility, and the prevention of action that erodes the public trust.

The town has developed many strong processes and practices, but has not always kept up to date in documenting these. With the reality of normal staff and committee turnover, it is important that a greater effort be made to keep certain key documents up to date.

The Committee considered which lines of authority might need clarification; which policies, procedures, and principles needed to be codified; and how to make it clearer to town residents how our government works and from where authority flows. Many of our recommendations address these issues.

1. The Committee recommends that the Selectmen establish and appoint an Audit Committee (*see Chart 3, #3*).

Responsibility for the annual examination of the Town's financial reporting, transactions, and control procedures rests with the Selectmen. Currently, the Town Manager appoints the auditor and the Selectmen review and vote to accept the audit report and management letter. The annual audit covers all financial matters within the Town budget and the Concord Public School budget. The regional high school is an independent governmental entity responsible for its own audits. (Currently the same auditor is used by the Town (including CPS) and the Regional School District, a practice we strongly support). The creation of an Audit Committee, appointed by the Selectmen, is consistent with best practice for private sector and governmental entities, providing an oversight level between the auditor and the management.

2. The Committee recommends that the Selectmen bring to town meeting a budget bylaw, outlining the current budget process, including the setting of guidelines, calendar of deadlines, and content of the final budget documents for both the town and the schools (*see Chart 3, #4 and discussion in Section IV-C, Recommendation #5*).
3. The Committee recommends that the Town Manager prepare and follow an Administrative Policy & Procedure (APP) describing financial policies and practices. The Selectmen and Finance Committee should periodically review the APP, to see if revisions are needed (*see Chart 3, #5*). A list of existing financial policies and documents is included in Appendix X.

Concord has been fortunate to have a long tradition of sound budgeting and long-term financial planning. The Town's budgeting process is year-round, with the development of goals, guidelines, performance measurements, budget details, and monitoring. The process is open and transparent. Concord's financial management and budget process, including its award winning budget documents, are highly regarded among peer communities. The Town has many financial policies in existence in various documents and locations. The Committee would like to see these collected and put into one document (perhaps an APP) that is formally adopted by the Selectmen, which would provide greater visibility.

4. The Board of Selectmen and Town Manager should review and update, as needed, bylaws, administrative codes, and APPs every ten years (*see Chart 3, #36*).

Concord has had a long history of creating written administrative codes, policies, and procedures. However, some are outdated. The Selectmen and Town Manager should take steps to ensure that they are reviewed and updated periodically.

5. The Town Manager should prepare annually a summary of longer-range plans and strategies underway in all departments, including (with assistance of the School Superintendent) the Concord Public Schools and the Concord-Carlisle Regional School District. This summary should be published annually in a readily available public document (*see Chart 3, #7*).

Significant long-range planning occurs within various departments of the Town. Examples include the annually updated five-year capital plans, pension and retiree health benefit funding projections, and ongoing enterprise funding. On the school side, planning models that project student enrollment, space needs, capital improvements, and other long-range needs are ongoing. Periodic citizen-derived plans such as the comprehensive long-range plan, open space and recreation plan, or housing production plan occur every five to 20 years, as

may be required under state law or upon vote of the Selectmen. It is critical that the Town set aside time and resources for longer-range thinking, including the integration of planning across departments and disciplines, and that the Town periodically measure progress on its long-range goals and objectives.

6. The Selectmen should consider developing a policy regarding public-private collaboration (see Chart 3, #9).

Concord has had many successful public-private collaboration and partnerships, where public and private resources are shared for the greater good. Some examples of successful partnerships are the Concord Free Public Library (established in 1873 by the Massachusetts Legislature, wherein buildings, grounds, and substantial special collections are owned and maintained by the private, non-profit Library Corporation in partnership with the Town which provides books, operating expenses, and staff supported mainly with public funds); Friends of the Performing Arts (FOPAC) (which exercises a long-term lease for the use, upkeep and maintenance of the town-owned property at 51 Walden Street); the Emerson Umbrella (which exercises a long-term lease for the use, upkeep, and maintenance of the town-owned property on Stow Street); the Visitor Center partnership with the Concord Chamber of Commerce; the development of the Beede Center by CC Pools, using private funds to develop a public facility on public land; and the development of the turf fields at the high school, using a mix of public and privately raised funds.

Such collaborations at their best can offer residents the benefits of services or facilities provided outside the town budget, or give new life to property not currently needed by the Town. But they also can raise important philosophical and legal questions that must be addressed with transparency and a view to the future use and management of town property, including the ongoing costs of maintenance and operation. Town officials must, of course, observe state and local laws including bidding laws, gift acceptance procedures, and proper authorization for long-term leases or transfers by town meeting.

The League of Women Voters suggested that the town consider a policy regarding public private collaboration, and we agreed that it would be helpful for residents to know what some of the considerations are when the Town considers these arrangements. We have included in Appendix Y a position paper developed by the National League of Women Voters on this issue and a "Best Practices for Private Funding of Public Services" policy adopted by the Concord Finance Committee in 2011.

7. A periodic review of the charter be conducted "once in a generation," with five to ten years too short and 57 years too long (see Chart 3, #37).

Our review of other town charters found that most charters do not provide for their own periodic review, so we are not recommending that such a review be added to Concord's charter. However, we feel that a periodic review about once every 20-25 years is warranted.

The Committee was specifically charged to look at the governance of the Library and Municipal Light Plant.

8. The Library Corporation, Library Committee, and Friends of the Library work to coordinate their interests better, possibly by having representatives attend other group meetings (*see Chart 3, #35*).

As noted above, the Concord Free Public Library operates through a collaboration between the Town and the Concord Free Public Library Corporation. In addition, the Friends of the Library is a private non-profit entity that provides programming and other support for the library. These roles are not always clear to library patrons and others. We did not find any basis for recommending a change in the operating or management structure of the library system; however, the Committee recommends that a document be prepared to clarify and explain how the library functions and how the different entities work together for the community.

9. The Committee finds the governance of the Municipal Light Plant as an Enterprise Fund is appropriate, with no charter changes needed. The Committee recommends that the Town Manager make more transparent the processes used by the Town Finance Department and the Light Plant for the calculation of interfund service charges and the amount that the CMLP pays annually to the General Fund (*see Chart 3, #6*).

E. Committee Governance

One major point of contact between the Town and the public is through interaction with Town Boards and Committees. The Selectmen and School Committee are elected committees; all others are appointed, in each case by the Selectmen, the Town Manager, the Town Manager with approval of the Selectmen, the Moderator, or by the School Committee. Each Committee is governed by one or more of the following: relevant state and federal statutes, town bylaws, town APPs, or a “committee charge” (written and voted by the appointing authority).

Because of the Town’s strong commitment to term limits, committee members serve for around six years at the maximum, with new members cycling in every year. This turnover has advantages and disadvantages. One of the challenges it poses is that new members must continually be brought “up to speed” regarding the subject matter and authority of the individual committee, as well as best practices for committee governance, and compliance with important state laws.

The Committee recommends a number of steps to encourage and support members of boards and committees so that: all boards and committees conduct their business in full compliance with the law, including Open Meeting, Public Records, Ethics, and the statutory authority of their own committee; all boards and committees utilize systems and practices that contribute to open, ethical government and the full and effective functioning of our democratic traditions; and all boards and committees utilize systems and practices that further General Principles of “good governance” (*see Chart 3, #17, #18, #21 through #25*).

1. The Committee recommends that the Selectmen consider updating the existing APP #10 “Town Board, Committee, and Task Force Appointment Policy” to include committee governance and best practices, to be added to the Committee Handbook (*see Chart 3, #17*). See Appendix P for a copy of APP #10.

2. The Committee recommends that the Selectmen ensure that all bylaws, committee charges, APPs, and administrative codes governing committees and departments are reviewed and updated as needed every ten years, and the committee charges be posted on the Town's web site for each committee (*see Chart 3, #18 & #36*).
3. The Committee recommends that committee and board appointing authorities make every effort to fill vacancies in a timely manner, especially those due to mid-term resignations (*see Chart 3, #19*).
4. The Committee recommends that appointing authorities publish openings in local news outlets and online, encourage interested individuals to complete and submit green cards for service on a committee, and make a special effort to encourage diversity for committee appointments (*see Chart 3, #20*).

We support suggestions that the Town explore ways to energize and engage younger people to become involved in town government; find ways to increase diversity of those involved in governance; and explore ways to make Concord more accessible to our immigrant community. In particular, it was suggested that we explore and recognize how cultural diversity adds to the town's rich legacy. Although the existing APP #10 addresses the issue of diversity to a certain extent in terms of age, gender, and neighborhood representation, we encourage the Selectmen to add a component to include cultural and ethnic diversity into the selection process.

5. The Committee recommends that the Selectmen make available annual training sessions for all members of town boards and committees on subjects including State Ethics Laws, Public Records Laws, Open Meeting Law, Concord's form of government, best practices in running a meeting, best practices in conducting a public hearing, and suggestions on ways to foster the town's principles of governance (*see Chart 3, #21*).
6. The Committee recommends that steps be taken to ensure that all committee members complete the state's online ethics training once every two years, as required by law (*see Chart 3, #22*).
7. The Committee recommends that the Town encourage, and, when possible, financially support board and committee members to attend subject matter-specific training in topics relevant to their board or committee (*see Chart 3, #23*).
8. The Committee recommends that all committees make available orientation materials for new members as a standard practice (*see Chart 3, #24*).
9. The Committee recommends that the Town Manager and Selectmen ensure distribution of the Concord Committee Handbook to all elected and appointed committee members (*see Chart 3, #25*).

F. Town Meeting

Our charge directed us to consider “the continued viability of the open town meeting concept (but NOT a detailed review of town meeting procedures).” Thus, our deliberations focused primarily on the question of whether open town meeting remains the best choice for the town as its legislative body or whether one of the other accepted forms of legislative body (representative town meeting or town council) were preferable. As noted above, the Committee recommends that the open town meeting remain as Concord’s legislative body (see Chart 1, #1). Of the three structural options available for a town’s legislative body under current law in Massachusetts (open town meeting, representative town meeting, or town council), open town meeting is the most participatory form of government, with each legislative session open to all registered voters, the warrant open to citizen petitions, and the opportunity as a legislative body to accept, amend, or reject the recommendations of town officials.

We offer the following additional recommendations on town meeting.

1. Recommend that the Selectmen consider the possibility of a special act to allow for a local binding ballot vote (see Chart 3, #15). The Committee was divided on whether the town should seek legislative approval for a special binding ballot process, before or after town meeting, for occasional high interest items and recommends that the Selectmen discuss this further.

Open town meeting has its critics, and not just in Concord.⁵ At our meetings and hearings and through correspondence, the Committee did hear many opinions (positive and negative) about town meeting. We forwarded comments to the Moderator in a letter (included in Appendix Z).

It can be hard to provide adequate time at the meeting to hear all points of view, and the deliberative nature of the meeting demands a substantial time commitment from voters. Some voters are unable to attend town meeting, and feel that the process leaves them out of important decision-making. Concord’s 1996 Town Meeting Study Committee suggested a number of procedural and administrative changes to address these concerns, and nearly all of their suggestions have been adopted or tried. Much has been improved. But frustrations remain, and the Town needs to do all it can to find reasonable solutions.

We did not hear arguments in favor of replacing open town meeting with either a representative town meeting or a Town Council form of town government, both forms of government where voters elect representatives to serve as the town’s legislative body. Either of these choices would put legislative power in the hands of fewer voters.

Instead, some residents expressed a desire for options that would allow all voters to continue to have a voice in all town affairs but not require them to attend numerous nights of a deliberative body. There is interest in taking some or all votes of town meeting to the polls. Indeed, Article 18 of the 2014 Annual Town Meeting pursued this point of view (although an overwhelming majority of those in attendance at the Town Meeting did not support the proposal when it came time for a vote).

⁵ Boston Globe Op-Ed by Edward Glaeser, “Too Much Hot Air at Town Meetings,” Oct. 17, 2013.

The states of New Hampshire and Vermont both have procedures that allow a town to opt in to the so-called “Australian ballot” system (see Appendix AA). This allows towns in those states to vote on certain matters of substance by secret ballot at an election held separately from town meeting. As of 2003, approximately 69% of Vermont towns used the Australian ballot for some articles after town meeting. New Hampshire’s law is referred to as “SB2” or “The Official Ballot Referendum” form of town meeting, which divides annual town meeting into two sessions, “deliberative” and “election,” held a few weeks apart. As of 2012, 60 New Hampshire towns had adopted SB2. Not surprisingly, in both states you can find both fans and detractors of the referendum form of government

But in Massachusetts, there is no statewide procedure that incorporates ballot voting with town meeting.⁶ Under current state law, a voter must be physically present at an open town meeting in order to vote. So if the Town of Concord wanted to pursue something like this, it is not a simple matter of opting into an existing framework. The Committee did some initial research to see whether individual towns have passed special acts that allow more items to be voted on at the ballot. We found a few towns that have special acts with two basic approaches: first, there are some towns that have required a ballot vote for the issuance of bonds above a certain dollar amount; second, other towns that had provisions for a brief waiting period after town meeting during which time signatures can be gathered to bring the issue to a ballot. See Appendix AA for further details.

The Committee did not support proposals to require a subsequent ballot vote on ALL town meeting votes. This is a complicated proposal that would break new ground in the Commonwealth. Some members of the Committee felt this would irrevocably change town meeting.

The Committee was more open to pursuing options that might allow occasional issues be taken to a ballot vote. Two specific options were floated.

- The first called for a “super-petition” article process completely separate from town meeting. The idea behind this was to seek special legislation to allow a citizen petition, requiring a high number of signatures, to place an item directly on the ballot without going to town meeting.
- The second was to allow for a waiting period AFTER a town meeting, during which time a citizen petition (also requiring a high number of signatures) could be filed requesting that a single warrant item be voted again, up or down, at the polls after town meeting. Under this scenario, the ballot vote outcome would prevail.

Both of these ideas would require considerable more research and policy development, public discussion and deliberation, and the specifics of any proposal would need to be laid out for the voters’ careful consideration at town meeting and special legislation. Both of these ideas had advocates on our Committee, but neither developed strong support on the Committee.

⁶ Although it should be noted that statutes require certain financial matters to be determined by a vote of a town meeting followed by a majority vote at a town election (Prop 2 ½ overrides and debt exclusions).

The Committee's other town meeting related suggestions to the Moderator and the Selectmen are as follows:

2. All town meeting motions and presentations be made available online in advance of town meeting, to the extent possible, with a disclaimer that the motions are subject to change at town meeting (*see Chart 3, #10*).
3. Concord should not initiate legislation to raise the number of signatures required for a local petition article on the town meeting warrant to a number greater than that required under state statute (*see Chart 1, #6*).

State law sets the number of signatures at ten for a petition article to be included in an annual town meeting warrant (100 signatures for a special town meeting). At least one town in the Commonwealth obtained a special legislative act that increased the number to 100 for an annual town meeting in that town, but the town subsequently had it returned to ten. With the increased use of social media to acquire necessary signatures, it is difficult to imagine a number that would seem appropriate. We do not want to make it difficult for citizen petitions. However, petitioners need to be aware that frivolous or repetitive citizen petitions take up the time of the meeting and can lead to frustrations with the process. Petition articles should be brought to the town meeting for good and considered reason.

4. The Town adopt practices and protocols that will improve the culture of dialog and better utilize the pre-town meeting hearings for debate and deliberation (*see Chart 3, #11*).

The Committee feels that the pre-town meeting hearings could be better utilized to listen to citizen concerns earlier in the process, and could also be a productive "laboratory" to experiment, within the limits of what is allowed under state law, with interactive social networking opportunities, allowing residents to express their thoughts via electronic opportunities.

In Concord, there are five public hearings held following the publication of the warrant, as follows: a Finance Committee hearing on the Town budget and articles including capital spending; a Finance Committee hearing on school budgets and financial articles and the Community Preservation Committee articles; a Board of Selectmen hearing on various non-financial and non-zoning items; a Planning Board hearing on proposed amendments to the Zoning Bylaws; and a Finance Committee hearing on enterprise fund budgets and financial articles. Recent practice in Concord has used these hearings as dry-runs for the presentations, without many opportunities for the public to make substantive comments on the merits of the proposals. By offering a better opportunity for real discussion, and a non-binding sense of the meeting, hearings may engage more citizens and become more meaningful earlier in the process.

5. Committees and boards use pre-town meeting hearings to try out electronic means of engagement with citizens (*see Chart 3, #12*). The Committee feels the town government could utilize the Internet and social media initiatives to increase the engagement of residents in our governance process.
6. The Selectmen and Moderator consider expanding town meeting to meet in electronically-connected, multiple locations (*see Chart 3, #13*).

Each location should have plentiful parking and full town meeting services. Combined with the continued live televising of town meeting, these “neighborhood” town meeting locations may offer easier access for busy families to participate in town meeting deliberations and votes. For example, citizens could attend the part of the meeting they are interested in without the problem of parking.

7. The Selectmen consider conducting a statistically reliable survey to gain better data about voter satisfaction and suggestions to improve town meeting (*see Chart 3, #14*).

Since 2006 Concord has conducted a biennial survey of citizen satisfaction with municipal services. The results are publicized and made available on the Town’s web site. The trends over the years are also monitored by town officials. We suggest that the Selectmen consider either expanding this survey to include some questions about town meeting or developing a separate survey devoted to town meeting issues. This was last done in 1995 as part of the Town Meeting Study Committee’s efforts, but enough has changed in almost 20 years to warrant a new survey.

G. Recommendations on Concord Schools

The Committee’s review of Concord School governance was limited. The Committee is mindful that town governance and school governance are largely separate under state law. Under state law, authority for most school matters is given to school committees and administrators or reserved for the State Department of Education. Moreover, Concord belongs to two regional school districts (CCRS and Minuteman) that are governed by regional agreements. The town charter determines the size and terms of the School Committee, and town meeting approves town budgets and school budgets. The Selectmen and the School Committee have distinct and separate lines of authority. The Committee, with advice from Town Counsel, has published a memo on the scope of the Town’s, as distinct from School Committee’s, authority to address school-related issues of concern to citizens. This document can be found in Appendix U.

Authority for the review and approval of budgets for public education derives from state law and our regional school agreements rather than from the town charter. State law sets forth the requirements for review and approval of budgets for public education in each district⁷. The School Committee is required to hold a public hearing on the proposed annual budget, which is generally done in conjunction with the Finance Committee pre-town meeting public hearing. State law gives school committees full authority to determine expenditures within the total appropriation as voted by the Town. Town meeting can make non-binding recommendations to increase or decrease certain items allocating appropriations, but may not limit the school committee’s authority to determine expenditures within the total appropriation.⁸ These legal requirements are different from the authority and practice of setting the budget for (non-school) town expenses. For the “town” budget, the Town Manager presents approximately 40 separate appropriation accounts to the voters and town meeting.

⁷MGL Chapter 71, Section 37

⁸ MGL Chapter 71, Section 34

Once voted at town meeting, funds cannot be transferred between these accounts except by town meeting action.⁹

Thus, although the citizen legislators at town meeting vote the “bottom line” on all the budgets, voters have more control over the detail within the town budget (comprising 44% of the overall town budget) and less control over the detail of the school budgets (which collectively comprise approximately 55% of the budget)¹⁰.

Despite the very real differences in budgeting authority, continued support of school budgets and programs in the community depends on careful communication, mutual respect, and a spirit of cooperation between the Schools and town meeting. To that end, we make the following recommendations:

1. At such time as the charter is amended or rewritten, it include a brief description of the powers and duties of the School Committee, given to them under the laws of the Commonwealth. The addition of this language may make the charter more complete and may help to clarify for voters that school committee authority derives largely from state law, and not from the charter (*see Chart 2, #3*).
2. The School Committee consider adoption of the principles of governance (*see Chart 3, #1*).
3. The School Committee include information on school governance authority and links to current school documents, in a searchable “Explaining Concord’s Town Government” electronic document (*see Chart 3, #26*).
4. When the charter is amended or rewritten, it include a provision encouraging effective cooperation and collaboration between the Selectmen, School Committee, Town Manager, and School Superintendent, to promote economical and efficient government (*see Chart 2, #6*).
5. The details of the town’s budget process be spelled out in a bylaw voted at town meeting. This bylaw should include the process used for setting of guidelines, the annual calendar of deadlines, and clear statements for the content of the final budget documents for both the town and the schools (*see Chart 3, #4*).
6. The Concord-Carlisle Regional School Committee consider utilizing the Audit Committee for oversight of the annual audit process and continuing attention to implementation of “best practice” standards in financial operations (*see Chart 3, #3*).
7. All school committee members participate in annual training sessions on important state laws (Ethics, Public Records, Open Meeting, best practices in running a meeting, etc.) (*see Chart 3, #21*).

⁹ Recent changes in state law offer an administrative option to transfer between accounts in the last three months of a fiscal year without Town Meeting action, but Concord has opted not to follow this practice (MGL Chapter 44, Section 33B)

¹⁰ Note, these percentages are based on the dollar amounts under the direct control of the Selectmen and the two school committees, and take into account that debt service and pensions and benefits for CPS employees are included in the Town Budget. Allocating costs between “education” and “all other” results in the more familiar roughly 67%/33% split.

8. The School Committee, in conjunction with the Selectmen, establish a technology committee charged with examining and recommending actions to foster best practices in utilizing information technology effectively and appropriately in town governance (*see Chart 3, #27*).

VI. CONCLUSION/COMMENTS ON IMPLEMENTATION

While we have tried to keep our recommendations focused, our charge was broad in scope, and as a result, our recommendations affect or apply to numerous areas of governance. We recognize that not all recommendations can be implemented at once, so to guide the Board of Selectmen and others who are responsible for implementation, the Committee voted whether each item was a high, medium, or low priority.

The Committee has included in Chart 3 some suggestions and options for implementation of the non-charter recommendations, along with an assignment of priorities. Not all members were in agreement as to the option for implementation or the assignment of priority, so we have included the votes.

We have also included, for reference and convenience, the individual or group that we felt was most appropriate to assume responsibility for implementation.

The Committee recognized that there are already many practices and habits of town governance that are important and should continue. At one point during our Committee deliberations, it was suggested that there are five key questions that community leaders might make a habit of asking as they govern going forward. These are:

#1 – Accountability – Is the Town’s accountability system sound in design? Is there a spirit and habit of acceptance of responsibility? Is there an informed set of committees and boards, with clearly defined responsibilities and powers?

#2 – Transparency – Are information flows timely, accurate, complete, and responsive to the needs of the user?

#3 – Civic Engagement and Participation – Is there participation and a broad, informed civic voice in town and school governance?

#4 – Governance Principles, Legal and Ethical Standards – Are there clear governance principles and clear legal and ethical standards?

#5 – Sustained Leadership Commitment – Are elected and appointed officials consistently exercising a leadership role so that their actions are in the best long-term and overall interests of the Town?

To provide context, and to assure that we had “covered all bases” in our deliberations, in Appendix BB we have arranged our recommendations under these five questions, together with practices that are already part of town governance.