

Memo

To: Board of Selectmen
From: Keith A. Bergman, Town Administrator
CC: Assistant Town Administrator for Finance & Budget, Town Counsel,
Affected Departments
Date: March 6, 2009
Re: Proposed Town Meeting Articles – Organizational Issues

For the Board of Selectmen's agenda on March 9, 2009, I am proposing for the Board's consideration the insertion of several articles for the May 4, 2009 Annual Town Meeting warrant addressing various organizational issues which, in my opinion, require attention.

Finance and Budget By-law. Clarifying amendments to the Finance and Budget By-law passed by the May 5, 2007 Annual Town Meeting are proposed to in order to address issues raised by the Attorney General in her March 17, 2008 approval letter of that by-law [see Appendix, below]-- which was not received in time to be addressed by the May 2008 Town Meeting. In order to be in compliance with MGL C.43C,§11-- the local option statute the Town accepted to establish its consolidated department of municipal finance-- the Attorney General wrote that the Town's by-law must specify the term length for the finance director (a/k/a Assistant Town Administrator for Finance and Budget); and specify who determines which ex officio finance position—Accountant, Treasurer, or Collector-- the AAFB/Finance Director holds. *In the case of the former, a term of up to three years is proposed. In the case of the latter, since the appointment of the AAFB is by the TA subject to the Selectmen's approval, that same standard is proposed for the determination of which financial position the AAFB would also hold.* Beyond that, this proposed by-law amendment would delete references in the Town Code to an elected Treasurer and Town Collector, since those positions are both now appointed, following the passage of Questions 11 and 12 of the May 12, 2007 Annual Town Election ballot.

To see if the Town will vote to amend the Town Code by amending Chapter 17, Finance And Budget, Department Of, as follows:

(1) by amending the second sentence of Section 1 by adding “for a term of up to three years,” so that said Section reads as follows:

There is hereby established in the Town of Littleton a Department of Finance and Budget (“Department”). The Department shall be managed by an Assistant Town Administrator for Finance and Budget (“AAFB”) who shall be appointed by, and

may be removed by, the Town Administrator, subject to the approval of the Board of Selectmen, *for a term of up to three years*. The Assistant Town Administrator for Finance and Budget shall report to the Town Administrator.

(2) by amending Section 2, so that it reads as follows:

The AAFB ~~may~~ *shall* also serve in the capacity of and have all the powers and duties presently vested in one of the following positions, *as determined by the Town Administrator subject to approval of the Board of Selectmen*: Town Accountant, Treasurer (~~if appointed~~), or Tax Collector (~~if appointed~~). The following positions, ~~if appointed~~, and the respective staff shall become part of the Department and report to the AAFB: Town Accountant, Town Treasurer, Tax Collector, and Chief Assessor.

And further by deleting from the Town Code Sections 29-1 and 29-3 relative to terms of an elected Town Treasurer and elected Town Tax Collector, since those positions both became appointed by voter approval of Questions 11 and 12 of the May 12, 2007 Annual Town Election ballot, or to take any other action in relation thereto.

Appointment of Employees in Town Administrator Departments. Even though the adoption of the Town Administrator by-law by the May 5, 2007 Annual Town Meeting gave to the Town Administrator the power of appointment of certain department heads— i.e., finance, building, highway, information systems, facilities, and human resources-- the power to appoint those department heads' supervisees still rests with the Board of Selectmen. The sole exception is finance, whose employees are now appointed by the department head [AAFB] subject to TA approval. This is pursuant to the Town's acceptance of MGL C.43C, §11, which requires that "the director of municipal finance [AAFB] shall appoint all personnel under his direction and control subject to the approval of the appointing authority as provided for his office [TA]."

For the sake of consistency among TA departments, then, it is proposed that where the TA is the appointing authority for the department head, the appointment of those departments' employees should—like the finance department-- be by that department head subject to TA approval. Since the TA by-law allow personnel actions for the heads of TA departments to be handled at an administrative level, rather than by a multiple member board subject to the Open Meeting Law, that courtesy is proposed to be extended to the employees of those departments, as well.

To see if the Town will vote to amend the Town Code Section 3 of Chapter 3, Town Administrator, so that it reads as follows:

The Town Administrator shall directly supervise and conduct performance reviews for the following current and future department heads unless otherwise specified by statute: Assistant Town Administrator for Finance and Budget; Head of the Highway Department; Facilities Manager; Head of Information Technology; Building Commissioner; and Human Resources. The department heads shall be appointed by, and can be removed by, the Town Administrator subject to the approval of the BOS. *Employees of the heads of said departments shall be appointed by the department head subject to approval of the Town Administrator.*

And further to authorize the Board of Selectmen to file home rule legislation to carry out the purposes of this article; or to take any other action in relation thereto.

Beyond the departments appointed by the Town Administrator, the 2007 Town Government Study Committee's Recommendation No. 13 was to "evaluate the potential benefits of consistent (i.e. strong or weak) police and fire department structure and reporting relationship." And in recent years, Town Meeting has voted to accept the so-called "strong chief" statutes for both the fire and police departments. However, the strong fire chief statute gives that chief the power of appointment of his subordinates, while the strong police chief statute does not. Thus, were the by-law proposed above to pass, the Chief of Police would be the only department head appointed by the Selectmen or TA who did not have the power to appoint his own subordinates. The Board might also wish to address this inequality. Town Counsel is of the opinion that this change would require a special act of the legislature, and cannot be effected by just a local by-law.

Home Rule Petition - Employment Contracts. The Board of Selectmen has executed contracts with the Town Administrator and Assistant Town Manager for Finance and Budget/Town Accountant under MGL C.41,§108N, the Fire Chief and Police under MGL C.41,§108O; and with the Police Lieutenant. In order to have statutory authority to enter into such a contract, the following home rule petition is proposed. As drafted, this petition would also extend contracts to all TA appointed department heads.

To see if the Town will vote to instruct its representative in the General Court to file a home rule petition for a special act entitled, "An Act Relative to Administration of the Town of Littleton," to read as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, the board of selectmen of the Town of Littleton may establish employment contracts for the Assistant Town Administrator for Finance and Budget, the heads of all departments appointed by the Town Administrator, and for supervisory personnel in the Littleton Police Department, for periods not to exceed 3 years to provide for the salary, fringe benefits and other conditions of employment including, but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performances of duties or office, liability insurance and leave. The contract shall prevail over any conflicting provision of any local personnel by-law, rule or regulation.

SECTION 2. This act shall take effect upon its passage.

The General Court may only make clerical or editorial changes of form to the bill, unless the Board of Selectmen approves amendments to the bill before enactment by the general court. The Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition, or take any other action relative thereto.

An alternative— if the Board wished just to address the Police Lieutenant contract but also wished to give the Police Chief the same appointment powers as the Fire Chief-- would be to submit a home rule petition addressing both items.

Please let me know what questions you have about any of these proposals.
Thanks very much.

APPENDIX - FINANCE AND BUDGET

Excerpt from Attorney General’s March 17, 2008 letter approving by-laws passed by Town of Littleton’s Annual Town Meeting of May 5, 2007 -- Case # 4610

* * *

Article 11 - The amendments adopted under Article 11 add to the town’s general by-laws a new Chapter pertaining to the establishment of the town’s Department of Finance and Budget (“Department”). The proposed by-law provides in pertinent part as follows:

Section 1. There is hereby established in the Town of Littleton a Department of Finance and Budget (“Department”). The Department shall be managed by an Assistant Town Administrator for Finance and Budget (“AAFB”) who shall be appointed by, and may be removed by, the Town Administrator, subject to the approval of the Board of Selectmen. . . .

Section 2. The AAFB will also serve in the capacity of and have all the powers and duties presently vested in one of the following positions: Town Accountant, Treasurer (if appointed), or Tax Collector (if appointed). The following positions, if appointed, and the respective staff shall become part of the Department and report to the AAFB: Town Accountant, Town Treasurer, Tax Collector, and Chief Assessor.

* * *

Section 3B. The Assistant Town Administrator for Finance and Budget, subject to the approval of the Board of Assessors, shall have direct authority over, conduct performance reviews, appoint and remove the Chief Assessor.

* * *

Provided; however, that this vote shall not take effect until the voters of the Town accept the provisions of Chapter 43C, section 11 at a Town Election.

In approving the proposed by-law, we call the town’s attention to G.L. c. 43C, § 11, which pertains to a consolidated Department of Municipal Finance. Section 11 provides in pertinent part as follows:

Any . . . by-law adopted pursuant to the provisions of this section shall provide for (i) a director of municipal finance who shall be appointed by and shall be responsible to the chief executive officer or to the chief administrative officer of the . . . town as the . . . by-law shall specify, (ii) the director of municipal finance to serve, ex-officio, as the accountant, auditor, comptroller, treasurer, collector or treasurer-collector of the . . . town; provided, however, that no director of municipal finance shall serve, ex-officio, as both accountant, auditor or comptroller and treasurer, collector or treasurer-collector and (iii), the term of the office of the director of municipal finance which shall not be less than three nor more than five years, subject to removal as may be otherwise provided in the charter of such . . . town (emphasis added).

Section 1 establishes the position of Assistant Town Administrator for Finance and Budget (“AAFB”), which we construe as the Director of Municipal Finance. However, the proposed by-law does not establish the length of the AAFB’s term. As quoted above, G.L. c. 43C, § 11, requires that the municipality choose the length of the AAFB’s term in the by-law. It is not obvious whether the town has delegated the decision on the length of AAFB’s term of appointment nor is it clear whether the by-laws can delegate such decision. Whether this difference between the proposed by-law and the statute rise to the level of an inconsistency with state law is debatable, thus we approve the proposed by-la with a strong caution that the town discuss them further with DOR and address them at a future town meeting.

We next call the town's attention to Sections 2 and 3B. Sections 2 and 3B use the term "Chief Assessor," and Section 3B provides that the AAFB shall have direct authority over the "Chief Assessor," including the authority to appoint the Chief Assessor. It is unclear what the town means by "Chief Assessor" since the proposed by-law does not define the position or the Chief Assessor's duties. General Laws Chapter 41, Sections 25A and 28, refer to the position of assistant assessor and authorizes the assessors to appoint assistant assessors. The statutes also provide that the assistant assessor's duties include helping the assessors in the valuation of property, and such other duties as the board of assessor's may require. If "Chief Assessor" means "assistant assessor" then appointment by the AAFB even with the Board of Assessor's approval might take away the authority given to the Board of Assessor's under state law to appoint assistant assessors.

We also point out that Section 2 provides that the AAFB will "also serve in the capacity of and have all the powers and duties presently vested in one of the following positions:" As quoted above, G.L. c. 43C, § 11, provides that any by-law adopted shall provide for the Director of Municipal Finance to serve, ex-officio, as the accountant, auditor, comptroller, treasurer, collector or treasurer-collector of the city or town; provided, however, that no Director of Municipal Finance shall serve, ex-officio, as both accountant, auditor or comptroller and treasurer, collector or treasurer-collector. Section 2 does not require the AAFB to serve ex-officio in any position, in apparent disregard for the mandatory ex-officio provisions laid down in the statute. It would be inconsistent with state law to interpret the language of the by-law as denying these mandatory ex-officio functions to the Director. We therefore conclude that the Director does as a matter of law hold the ex-officio positions laid down in the statute, despite the legislative silence of the by-law itself. Moreover, it is unclear about who decides which positions the AAFB shall serve. However, since the AAFB along with the Town Administrator and subject to approval by the Board of Selectmen is the appointing authority for the Town Accountant, Town Treasurer, if appointed, and the Town Tax Collector, if appointed, it is arguable that the decision is the choice of the AAFB along with the Town Administrator, subject to approval by the Board of Selectmen. We suggest that the town amend Section 2 at a future town meeting in a manner consistent with this caution. . . .