

Charter and Bylaw Committee Minutes

Wednesday July 12, 2023

Arcand Meeting Room 6P

Members in Attendance: D. Martinis, S. Garten, K. Grant, J. Altomonte, J. Collamati (zoom), W. O'Connell, L. Sposato, B. Salisbury (zoom)

The meeting opened at 6p by D. Martinis.

- I. Presentation of Red-Lined version of Charter to be used by Committee for Review and opinions and comments from Atty Lauren Goldberg. Atty Goldberg was attending our meeting via zoom to answer questions. D. Martinis stated that although we will be discussing these items with Atty Goldberg, we will not take a vote at this meeting as we have not had ample time to read and discuss.
(The Red- Line charter is not yet cleaned up and therefore, KP Law will continue to work on that and send it to committee ASAP. The public may also request the working draft.
Atty Goldberg apologized for not getting the requested information to us sooner.)
(Please see attached questions and opinion responses below from Atty. Goldberg).

Citizen comment and question on these issues are the following:

Mr. Soter spoke out regarding the minimum requirements and pointed out that the US Constitution doesn't have an education requirement.

D. Abernathy from Kennedy Rd stated that she is in favor of requiring a minimum of a master's degree for the position of Town Administrator, as well as keeping the requirement that the Town Administrator need to reside in town. When K. Grant brought up that the TA of Medway is a Bellingham resident, Ms. Abernathy responded that she considered them "all one community".

Mr. Fluette spoke to the 2003 charter review and said that the minimum requirement that is in there was placed there to have a floor to start.

Mr. Hamway reminded us that the Charter is to us as the Constitution is to the US.

Mr. Pizzi asked if the Select Board could override the minimum requirements and if we even needed it in there. On the advice of the town counsel, the requirement should remain and that if the select board decided to hire a Town Administrator without minimum requirement they would need to justify and answer their decision.

- II. Discussion with Members of the Bellingham Board of Health regarding increasing number of members from Three (3) to Five (5)
V. Forte, chair of the Board of health came to discuss. L. Sposato stated that he feels that there should at least be a 5-member board so there are more people to make the decisions

as there is a very big impact felt by the decisions of this board. This sentiment was echoed by other members of the committee as well.

Members of the committee are in favor of this change as well as the members of the Board of Health.

D. Martinis asked if the board is overly taxed, being only 3 members. V. Forte said that right now it's difficult as he is the acting health agent as well. But that more members would be better. He also stated that the members should be appointed based on their qualifications. And it is not a popularity contest. A 3-member board is also not efficient as they cannot have any conversation if it is not in an open meeting.

J. Collamati said that he understands the constraints of the board as it is, and he can see both sides of this.

B. Salisbury: asked if we are creating an issue if we move the board to 5 and no one applies.

W. O'Connell stated that we could come up with language to help with the transition from 3 to 5.

Mr. Fluette said that history behind this was that there were some great people who did serve but didn't have the background to serve in the capacity that was needed. He said there should also be consideration for those with the want and capacity to learn in the position as well.

We will ask Atty Goldberg to review this and give us language for a Motion to change section 8-2-3 of the charter to in regard to the board health moving from a 3-member board to a 5 member.

Other Old Business

D. Martinis reiterated that a clean red line charter copy will be sent to members as soon as Atty Goldberg has finished it. He also suggested that we quickly go through each item and check each item that the committee has no issue with so that we can move on and really focus on those items those take issue with.

- III. Any New Business: D. Martinis will ask Atty Goldberg her opinion on how we go about reviewing and approving minutes going back to the start of the process. The board would like this process to be done in such a manner that it falls in line with any state ethics requirement. We will ask Atty Goldberg to participate in our next meeting via zoom or in person.
- IV. Decision on August meeting date: committee decided on August 9 at 6p. we will review the minutes and check off any charter changes that have been agreed upon.
- V. Motion to Adjourn: 8:02p Motion made by Sue Garten and seconded by Larry Sposato.

TO: Mr. Donald Martinis, Chair, Charter Review Committee (*By Electronic Mail Only*)

CC: Ms. Beth Cornell-Smith, Interim Town Administrator (*By Electronic Mail Only*)

FROM: Lauren F. Goldberg, Esq.

RE: Bellingham Charter Review Committee – Correspondence re: Proposed Charter Revisions

DATE: July 12, 2023

Question Presented

You have requested review of correspondence received by the Charter Review Committee (“Correspondence”) from a registered voter concerning certain amendments to the Charter recommended by the Committee to the spring 2023 Annual Town Meeting.

Short Answer

In my opinion, amendments to the Town Charter concerning Town governance will supersede any similar provisions in the General Laws, and, for that reason, will be “deemed consistent” with such laws. Below, please find a summary of relevant law and then comments responding to various issues raised in the Correspondence.

Analysis

A. Relationship of Charter to General Laws

Case law establishes that a charter carries the force of law. For example, in Welch v. Contributory Retirement Appeal Bd., 343 Mass. 502, 508 (1962), the Court considered a charter provision that varied from the General Laws and stated, “[Town] charters are essentially [such] special enactments designed to provide for the particular needs of the various [towns].” [emphasis added] [internal citations and quotation marks omitted]. Similarly, a long line of cases analyzing the relationship between special acts and General Laws establishes that provisions of a special act (or charter) generally take precedence over an inconsistent state law. Grass v. Catamount Development Corp., 390 Mass. 551(1983).

General Laws c.43B, 20, the Home Rule Procedures Act, specifically addresses this issue, deeming consistent with the General Laws any charter or charter amendment “relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and

the distribution of powers, duties and responsibilities among local offices.” See Town Council of Agawam v. Town Manager of Agawam, 20 Mass. App. Ct. 100 (1985) (holding that G. L. c.43B, §20 requires the conclusion that a charter provision authorizing the town manager to appoint local officials without confirmation by the town council “must be deemed consistent with” the General Laws).

B. Resident Correspondence

By way of background, the Correspondence addresses certain amendments to the Charter proposed to the spring 2023 Annual Town Meeting by the Committee. The Charter has been under review for several years, and it is my understanding that the proposed Charter amendments were consistent with discussions at the Committee’s various meetings.

1. Periodic Charter and Bylaw Review

There is nothing in state law or the constitution that requires periodic review of a charter or bylaws. As such, there is nothing addressing the size, function, membership or appointing authority for a charter or bylaw review committee, and such matters are left to the discretion of Town Meeting. The Correspondence suggests replacing the current 7-7-1, and the Committee’s proposed 7-5-1, with the following:

AT LEAST ONCE EVERY TEN YEARS IN EACH YEAR ENDING IN THREE, A SPECIAL COMMITTEE TO CONSIST OF ELEVEN MEMBERS SHALL BE ESTABLISHED FOR THE PURPOSE OF REVIEWING THIS CHARTER AND TO MAKE A PUBLIC REPORT WITH RECOMMENDATIONS TO THE SELECT BOARD AT LEAST FIFTEEN DAYS PRIOR TO THE TOWN MEETING CONCERNING ANY PROPOSED AMENDMENTS OR CHANGES WHICH SAID COMMITTEE MAY DETERMINE TO BE NECESSARY OR DESIRABLE. THE COMMITTEE SHALL CONSIST OF ELEVEN MEMBERS WHO SHALL BE CHOSEN AS FOLLOWS: THE SELECT BOARD, THE SCHOOL COMMITTEE, THE PLANNING BOARD, THE TOWN CLERK, AND THE BOARD OF THE LIBRARY TRUSTEES, AND THE FINANCE COMMITTEE SHALL EACH DESIGNATE ONE PERSON; AND FIVE PERSONS SHALL BE APPOINTED BY THE TOWN MODERATOR. FOUR OF THE FIVE SAID APPOINTMENTS SHALL NOT BE AN APPOINTED OR ELECTED OFFICIAL IN THE TOWN OF BELLINGHAM. [emphasis added].

Thus, the revision would increase the size of the review committee from 9 to 11, and, for such purposes, reduce from 2 to 1 the number of Finance Committee appointments, add 1 appointment for the Town Clerk, and increase the number of Moderator appointees from 3 to 5. As explained above, all of these factors are completely within the discretion of the Town, in my opinion. Note: (1) the increase on the Committee would increase the quorum from 5 to 6; and, (2) local committees typically have 5, 7, or 9 members. In my experience, although there is nothing prohibiting a Charter Review Committee of 11 members, there is some general consensus that the larger the size of the committee, the harder it is to accomplish that committee’s business.

The proposed amendment in the Correspondence also inserts a provision requiring that the Charter Review Committee provide a report with recommendations to the Select Board no later than 15 days prior to the date of Town Meeting. As noted, whether to include a deadline of this nature is at the discretion of the Town Meeting. Be aware, however, that, in my opinion, a reviewing court would likely hold that such a provision is directory, not mandatory. See Young v. Town of Westport, 302 Mass. 57 (1939) (holding that a bylaw providing that the finance committee “shall” hold a public hearing on any financial articles was not

mandatory and that the failure to hold such a hearing did not invalidate a town meeting appropriation). Of course, from a practical perspective, regardless of whether a report is required by a particular date, if the voters have not received enough information concerning an issue prior to Town Meeting, they can simply vote no.

2. Committees of Town Meeting

Questions were raised in the Correspondence concerning the proposed deletion of Section 2-3-1 of the current Charter. In my opinion, this section essentially restates what is already allowed by law, i.e., Town Meeting can create, direct the appointment of, and charge a legislative committee by vote of the Town Meeting or by adoption of a bylaw. Where this authority already exists, regardless of the language in current Section 2-3-1, in my opinion, such language need not appear in the Charter. As with the other issues addressed in the Correspondence, whether to include such language is a decision for Town Meeting. Note, in contrast, that the structure of the Finance Committee is required to be established by law and the Committee proposed Section 2-3-1 does just that.

3. Dates of Annual Town Meeting and Annual Town Election

The Correspondence suggests that the dates of the Annual Town Meeting and Annual Town Election be changed so that the Annual Town Meeting occurs before the election. The Charter does not set the dates of these events. Instead, these dates are addressed in the General Bylaws, Sections 205-1 and 205-2. Including these dates in the bylaws, rather than in the Charter, allows the Town flexibility to amend the bylaws from time to time by vote of Town Meeting, rather than requiring a full Charter amendment.

4. Size and Manner of Selection of Board of Health

The Correspondence also asks about the size of the Board of Health, and its status as an elected or appointed office. These are, of course, matters that can be addressed by the Charter - whatever choices are made will be deemed consistent with state law. Note, however, that in Massachusetts eligibility to run for office is strictly limited to whether a person is a registered voter in that municipality by the correct date. Thus, with an appointed board of health, the appointing authority can seek out and appoint persons familiar with health-related issues. If the board is elected, no such option exists. Note further that when changing the manner of selection of a board, it is typically useful to consider whether sufficient interest exists – are there persons seeking appointment to such board or more often are there vacancies? If a board was previously elected, were there contested races? Are there contested races on the Annual Town Election ballot generally?

5. Town Administrator Residency Requirement

The Committee's proposed amendment to Section 4-1-2 contemplated removal of the current requirement that a Town Administrator become a resident of the Town within a year of the Administrator's appointment. Again, this is something that can properly be addressed by the Charter. In my experience,

however, fewer qualified candidates are seeking appointment to town administrator/manager positions, and elimination of the residency requirement, is, in my opinion, one way to ensure a robust candidate pool.

6. Appointing Authority

Currently, Section 4-2-1 of the Charter requires that any appointment made by the Town Administrator, whether a department head, officer, or employee, be confirmed by a majority vote of the Select Board. It does not establish a time-frame for such action, however. As noted directly above, it is harder than ever, in my experience, to identify, appoint and hire qualified municipal employees. In general, persons seeking to be hired to a new job do not want their current employer to know they are looking elsewhere until they are relatively certain they have been selected. The Committee's proposed amendment would address this issue by clarifying that an appointment made by the Town Administrator will take effect 15 days after the Administrator notifies the Board. The proposed amendment also gives the Board the authority to sooner reject or approve such appointment. Thus, the Select Board retains the same authority as set forth in the current charter, with a practical framework established for decision making. This is meant to benefit the appointee in a timely fashion.

7. Negotiation of Collective Bargaining and other Employment Contracts

As I recall, the Committee's proposed amendments to Section 4-2-8 of the Charter were directed at readability and did not change the substantive meaning of the section. With regard to contract negotiations, ultimately, the Select Board is the "appropriate public authority", meaning that although the Town Administrator negotiates the contracts, the Select Board is the only entity with authority to sign them. In my opinion, other town charters typically address this issue in the manner set forth in the Charter.

8. Filling Vacancies on Elected Multiple-Member Boards

Again, as I recall, the Committee recommended no substantive change to this section of the Charter. As previously indicated, however, where this issue relates to Town governance, the process for filling vacancies in elected boards may be established by the Charter.

The Correspondence suggests that if no joint meeting is held within 30 days of the date the Select Board receives notice of a vacancy on another multimember board, the power to appoint to fill the vacancy should shift to the board with the vacancy. This result, I note, is not consistent with the G.L. c.41, §11, which sets forth a process parallel to that included in the Charter. Whether to change the process is a policy decision that can be addressed by the Charter. In my opinion, the existing process appears to attempt a balance between two issues – first, the Select Board, selected directly by the voters to serve as the chief policy-making board of the Town, is involved in the appointment to fill a vacancy on another elected board, but the Select Board is not solely responsible for the appointment assuming the board with the vacancy timely notifies the Select Board; second, if the board with the vacancy does not provide the required notice, it allows the Select Board to make an appointment to the position. Of course, if the concern is that the Select Board may receive the required notice, and, as the chief policy-making official of the Town choose not

to call timely for a meeting to fill the vacancy, the voters themselves will get to weigh in on this issue at the ballot box. Most towns within the commonwealth have the Select Board fill the open seat.

9. Qualifications for Appointment of Chief Financial Officer and Town Administrator

The Correspondence suggests removing qualifications for appointment of the Chief Financial Officer and the Town Administrator from the Charter, leaving that issue to the discretion of the appointing authority. As noted above, the provisions of a charter relative to Town governance will be deemed consistent with state law. For that reason, whether to include such criteria in the Charter is a policy question. Does Town Meeting find value in establishing minimum qualifications for appointment to the critical positions of Finance Director and Town Administrator? If yes, then including such criteria is useful. If Town Meeting is comfortable allowing the appointing authority for such positions to independently determine the qualifications for the position, then such information need not be included. In my experience, however, it is more common than not for charters to include such minimum qualification requirements.

10. Town Administrator Delegation of Authority

In addition to proposing revised language for the portion of Section of 4-1-1 concerning the appointment and qualifications of the Town Administrator, the Correspondence proposes to revise the Charter with regard to the Town Administrator's ability to delegate responsibilities, stating:

WITH THE APPROVAL OF FOUR MEMBERS OF THE SELECT BOARD THE TOWN ADMINISTRATOR MAY DELEGATE TO OTHERS THE ADMINISTRATOR'S POWERS AND DUTIES UNDER THIS CHARTER , EXCEPT AS MAY BE PROHIBITED BY LAW, AND , FURTHER ANY ACTIONS TAKEN BY A DESIGNEE AUTHORIZED HEREUNDER SHALL *BE* DEEMED TO BE THE ACTIONS OF THE TOWN ADMINISTRATOR. THIS DELEGATION OF POWER SHALL NOT EXCEED MORE THAN THREE CALENDAR DAYS UNLESS REAUTHORIZED BY A VOTE OF THE SELECT BOARD AS SET FORTH IN THIS SECTION FOR AN ADDITIONAL THREE CALENDAR DAYS.

This proposed amendment would establish a very specific, very formal transfer of authority. Currently, in my opinion, the Town Administrator can and does delegate responsibilities established by the Charter, by Bylaw and by vote of the Select Board, to others to fulfill. Otherwise, in my opinion, it would not be possible for the Town Administrator to accomplish all that is necessary to provide for the daily operations of the Town. The Correspondence proposed language would significantly limit this.

Moreover, as I understand it, that was not the Committee's intention when it proposed insertion of Section 4-1-12. Instead, including that subsection was a way to emphasize that the Town Administrator remains responsible for all the duties set forth for the position in the Charter and Bylaws, and as established by vote of the Select Board, regardless of whether the Town Administrator relies on others to achieve those goals. Further, as noted above, in my opinion, candidates for Town Administrator will view favorably those municipalities where they are authorized to independently make operating decisions that they deem appropriate for daily operations. This language was intended to speak to that issue.

11. Process for Appointing Temporary or Interim Town Administrator and Authority of Position

My understanding of the Committee's proposed revisions to Sections 4-3 of the Charter is that there was concern that the existing language did not establish a clear process for appointing a temporary Town Administrator during a short or long term absence or specify their appropriate role. As you know, the Town has had some practical experience with this issue, and the Committee sought to provide structure for possible

similar situations in the future. Thus, the amendments were intended to clarify the process for filling the position of Town Administrator during a temporary absence and to identify the authority of that position and of the Select Board under such circumstances. Essentially, the goal was to create an appropriate plan for the continuation of government, i.e., a plan to provide for continued, day to day operations in the event the Town Administrator is absent.

The Correspondence suggests a different amendment to these sections, providing that Section 4-3-1 should include the following language (note that the Correspondence does not indicate whether this should be inserted at the end of the section, but that may be the case):

IN THE EVENT THE TEMPORARY ABSENCE [OF THE TOWN ADMINISTRATOR] EXTENDS BEYOND 60 CALENDAR DAYS THE SELECT BOARD AT A DULY POSTED AND PUBLIC MEETING SHALL FOLLOW THE BELLINGHAM CHARTER LANGUAGE SET FORTH IN SECTION 4-3-2 VACANCY TO CONTINUE TO FILL THE TEMPORARY ABSENCE.

This language appears intended to compel the Select Board to follow the process for filling a vacancy in the office if there is an extended absence. In my opinion, this provision may substantially limit ability of the Select Board, the chief executive official of the Town, to take such action as it deems appropriate, based upon the particular circumstances at issue, to ensure the day to day operations of the Town. Moreover, from a practical perspective, it is unlikely, in my opinion, that the Town would find significant interest from candidates outside of the municipality to serve as the Town Administrator for some temporary, unknown period of time. Another consideration may be the implications of such a revision with regard to the provisions of the Town Administrator's contract.

The Correspondence suggests a further change to this process, stating:

IN THE EVENT UNDER SECTION 4-3-2 A TEMPORARY ABSENCE CONTINUES TO EXIST AFTER 180 CALENDAR DAYS THE SELECT BOARD MAY BY A MAJORITY VOTE OF THE BOARD AT A DULY POSTED AND PUBLIC MEETING RENEW THE EXISITING APPOINTEE OR ANY OTHER QUALIFIED INDIVIDUAL BY AN ADDITIONAL 90 CALENDAR DAYS.

This section provides that if there is an absence extending more than 180 days, then the Select Board may make extend the appointment or appoint someone else to serve for another 90 days. As noted, in my opinion, the Charter can address the process for filling a temporary absence or permanent vacancy in the office of Town Administrator.