

Please Note: These minutes are pending board approval.

**Ad Hoc BOE Charter Revision Review
Newtown, Connecticut**

Minutes of the Ad Hoc BOE Charter Revision Review virtual meeting held December 28, 2020 at 1:30 p.m.

M. Ku,
D. Zukowski,
3 Public by phone

Ms. Ku called the meeting to order at 1:38 p.m. and stated it was being recorded

Item 1 – Public Participation

None

Item 2 – Discussion of Possible Charter Revisions from the BOE

Ms. Zukowski and Ms. Ku discussed Charter draft revision proposals (Attachment A)

Ms. Ku would follow-up with Legal Counsel regarding questions about the Non-Lapsing Account and whether how it relates to “appropriations.”

An additional meeting would be scheduled for Wednesday December 30 to finish up the work

Item 3 – Public Participation

Tom Whitmore asked if there was any data on voter participation in referenda, and suggested that this would be helpful information for determining whether anything should be changed.

The meeting was adjourned at 3:27pm

ATTACHMENT A

BOE Elections

Town Charter Section 3-15(b) reads:

“At each regular Town Election members of the Board of Education, the Planning and Zoning Commission, Board of Assessment Appeals, Zoning Board of Appeals, and the Police Commission shall be elected and the number to be elected shall be determined by the number of members whose terms expire on or before the December 1st after the election.”

Reason to review:

When a revised charter is filed with the State, a statute governing BOE elections must be indicated. For the 2016 Charter filing, Connecticut General Statute 9-204 was selected to apply, impinging on number of candidates a party could put forth on the ballot and number of candidates electors could vote for. This was an unintended restriction on the ability of voters to vote for BOE members. As a result, the Legislative Council enacted Town Ordinance 124 to address the issue. When the next revision of the Town Charter is filed with the state, the effective BOE elections statute will likely again be selected as a part of the filing process.

Recommendation:

Newtown Ordinance 124 should be merged into the Charter, specifically calling out that section 9-204b of the Connecticut General Statutes applies.

Special Appropriations

Town Charter Section 6-35(b) reads:

“A request for a Special or Emergency Appropriation may be initiated by the First Selectman with the approval of the Board of Selectmen or by the Legislative Council.”

Town Charter Section 6-35(c) reads:

“If the First Selectman initiates an Emergency Appropriation request, the appropriation may be approved by a majority vote of the Legislative Council. If initiated by the Legislative Council, the Emergency Appropriation must be approved by the affirmative vote of at least eight (8) members of the Legislative Council.”

Reason to review:

The appropriations process as outlined in 6-35(b)-(c) is not consistent with respect to budgetary and CIP appropriations. For budget appropriation requests, both the Board of Selectmen and the Board of Education prepare their respective requests, and provide those requests to the Board of Finance. For the Capital Improvement Plan (CIP), newly amended, the Board of Selectmen and the Board of Education also prepare their respective requests, and provide those requests to the Board of Finance. Note that the CIP process appears to be a specialized special appropriation, in that 6-20(e) specifically calls out the limit on the Legislative Council’s appropriation authority noted in 6-35(e), suggesting that the BOE does initiate special appropriation requests.

Recommendation:

Town Charter Section 6-35(b) and (c) be amended to include the Board of Education as a possible initiator of Special Appropriations.

There is no explicit appropriation process included in the charter for the BOE Non-Lapsing Account

Reason to review:

When the fiscal year ends, any BOE budget surplus may be added to the BOE Non-Lapsing Account, per Connecticut General Statute 10-248a, newly amended¹. In the Oct 20, 2020 Town Counsel legal opinion RE: Procedure to Transfer Board of Education Surplus at the End of the Fiscal Year, D. Grogins states that such funds are “similar to a ‘special appropriation,’” though not technically a special appropriation.

Recommendation:

A new appropriation classification that is funded by existing funds (like the BOE budget surplus) and that is not included in the Legislative Council’s appropriation authority for special appropriations be added to the Charter. The initiation and pipeline through the respective Town Bodies should not be set forth in the charter but instead be implemented similar to the CIP process, via a Financial Regulation, or cross-board policy suite.

Date for Referendum

Town Charter 6-14(a) reads:

“The proposed town budget shall be submitted for adoption at the Annual budget referendum to be held on the fourth Tuesday of April between the hours of 6:00 a.m. and 8:00 p.m.”

Reason for Review:

Historically, a small percentage of Newtown’s voting population votes during budget referenda. Changing the date or accessibility of the referendum could increase voter turnout. Could something be changed to increase voter turnout?

Recommendation:

Review voting information to understand whether moving the referendum date or expanding accessibility via absentee or mail-in ballot would increase voter turnout.

¹ Sec. 10-248a. Unexpended education funds account. For the fiscal year ending June 30, 2020, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district for each town may deposit into a nonlapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided (1) such deposited amount does not exceed two per cent of the total budgeted appropriation for education for such prior fiscal year, (2) each expenditure from such account shall be made only for educational purposes, and (3) each such expenditure shall be authorized by the local board of education for such town.

Appropriating Authority

Town Charter 1-20 Summary of Governance defines: (a) The Chief Executive and Administrative Officer of the Town, (b) The administrative body of the Town, and (c) The legislative body of the Town, but does not define the appropriating authority of the Town.

Reason for Review:

- A) The Connecticut general statutes contain several references to **“the board of finance in each town or city having a board of finance, to the board of selectmen in each town having no board of finance or otherwise to the authority making appropriations.”** Because the Newtown Charter has both a board of finance AND a separate authority making appropriations, this has led to ambiguity in several instances that affect Board of Education processes.

CT Gen Stat §10-248a. Unexpended education funds account reads “For the fiscal year ending June 30, 2011, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, **the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations** for the school district may deposit into a nonlapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided (1) such deposited amount does not exceed two per cent of the total budgeted appropriation for education for such prior fiscal year, (2) each expenditure from such account shall be made only for educational purposes, and (3) each such expenditure shall be authorized by the local board of education for such town.” *Since the inception of Education Non-Lapsing Account, Newtown has depended on the Board of Finance to make the deposit into the Education Non-lapsing account. However, in the past year, the Town Attorney has opined that the Legislative Council has this authority – not the Board of Finance (“Procedure to transfer Board of Education Surplus at the End of the Fiscal Year,” October 20, 2020).*

Similarly, CT Gen Stat § 10-153d. Meeting between board of education and fiscal authority required. Duty to negotiate. Procedure if legislative body rejects contract. Reads “(a) Within thirty days prior to the date on which the local or regional board of education is to commence negotiations pursuant to this section, such board of education shall meet and confer with the board of finance **in each town or city having a board of finance, with the board of selectmen in each town having no board of finance and otherwise with the authority making appropriations** therein. A member of such board of finance, such board of selectmen, or such other authority making appropriations, shall be permitted to be present during negotiations pursuant to this section and shall provide such fiscal information as may be requested by the board of education.” *Which elected body should be met with prior to negotiations and which body has authority to reject the contract has varied over time.*

And Gen Stat § 10-222 indicates that “Each local board of education shall prepare an itemized estimate of the cost of maintenance of public schools for the ensuing year and shall submit such estimate to the board of finance **in each town or city having a board of finance, to the board of selectmen in each town having no board of finance or otherwise to the authority making appropriations** for the school district, not later than two months preceding the annual meeting at which appropriations are to be made.” *In this case, the Board of Education submits the budget to the Board of Finance not later than two months before the appropriation.*

- B) Because the Newtown Charter calls for both a Board of Finance AND an “authority making appropriations” (i.e. Legislative Council), this has created redundancy. The redundancy leads to duplicated efforts. Annually, Board of Education members and district personnel attend multiple Board of Finance meetings to present and answer questions for both the budget and CIP processes. The same process is repeated for Legislative Council review.

The Legislative Council can and frequently does override the decisions of the Board of Finance. The duplicative process may now be required for use of the Education Non-Lapsing Account as well.

Recommendation:

The role of each board in processes required by the state should be clearly defined by the Charter. Require either the BOF or the Legislative Council to determine financial decisions – not both. The Board of Education recommends that one body be defined in the Charter for the review AND approval of financial decisions.

Remove references to the Board of Education as a department

1-25(a)7 lists the Board of Education as an example of a Town Department.

Reason for Review:

The Board of Education, although listed as a line in the Town budget, is generally not considered a department:

- Per statute, the Board of Education is defined as an entity of the state.
- The Board of Education budget is not overseen by the Board of Selectman as the department budgets are.
- The Board of Education follows budget processes that are parallel to the Board of Selectman, not parallel to town departments.
- The 2012 Charter Revision made the municipal and Board of Education budgets distinct such that each would be approved separately and stand on its own. That is, if one failed, the other could pass independently.
- The Charter Revision Commission of 2016 was asked to review the use of the term “department” in reference to the Board of Education within the Charter. All other instances of the reference were removed.

Recommendation:

Remove the remaining reference for consistency

Other questions to consider:

2-25 - A person cannot legally be compelled to vote

4-05(e) 9 and 10 Clarify that the Finance Director is responsible for municipal (not BOE) negotiations

6-20(f) 2 – what does this mean?

BOS meeting of 5/1/17 and 5/15/17 – the appropriations process was discussed and several areas were identified as needing clarification in the Town Regulations. It does not appear that this was ever done. Should these be considered as Charter updates (maybe not a BOE issue)?