

**September 22, 2015**

## **Charter Commission Report**

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### **1. Executive Summary.**

If the Board of Selectmen accepts the Proposed Charter then the Proposed Charter will be submitted to a vote of the electorate at the regular elections held in November 2016.

The Charter provides in a single document, a comprehensive definition of the structure of Lebanon's Town government, defines the powers and duties of town officials and institutions and identifies procedures for the orderly operation of the government. Whenever possible, it is the intent to adopt uniform and consistent operating procedures and policies which have heretofore not been consistent or were ill-defined.

The basic Town Meeting / Selectmen form of government is preserved. All current boards, commissions, committees and authorities are preserved. The Charter changes the Town Clerk, the Tax Collector and Town Treasurer from elected to hired positions and establishes a new, hired position of Town Administrator. The Board of Selectmen is changed from a 3 person board elected every two years to a 5 member board with 4 year overlapping terms. It is the intent to adopt the Connecticut General Statutes minority political party representation requirements for all boards commissions or similar bodies.

Several procedural features are clearly defined in the Charter. The charter clearly defines the roles of the Board of Finance, the Board of Selectmen and the Board of Education in the budget process. It ensures uniform procedures for filling board vacancies. A uniform policy is specified for appointment of alternates to serve when regular members are not able to serve, except in the case of the Board of Finance which is specified by Statutes. It requires the Board of Selectmen to define uniform hiring, personnel and compensation policies and to serve as the hiring agent for the town. It also provides that many decisions of a minor nature can be made by the Board of Selectmen to streamline the operation of the government. Finally the Charter stipulates that the Board of Selectmen review the Charter at least every three years and consider Charter revisions if it deems necessary.

This report provides the Charter in complete form, identifies ordinances that are superseded by the Charter and a plain language overview of the major provisions. The report also includes a list of issues that the Charter Commission suggests be considered as part of a future charter review/revision.

## **2. Ordinances that are superseded by the charter.**

The following Lebanon Town Ordinances are superseded by provisions in the Charter and the Charter states that they are repealed with adoption of the Charter. These ordinances are incorporated in various sections of the Charter in a form that is UNCHANGED, MODIFIED, EXPANDED or ELIMINATED as described in the following section. The Charter provisions may not use the exact wording of the ordinance and certain ordinance provisions may appear in different places in the Charter as indicated by the Charter section number. In addition, several of the ordinances include administrative provisions such as compensation, implementation dates and citizenship requirements for agencies which are covered by uniform provisions in various parts of the charter.

1. **ORDINANCE REGARDING THE APPROVAL OF CAPITAL PROJECTS ( May 21, 2009).**

The ordinance states that "any capital project with an estimated tax impact in excess of 5% of the Mil Rate" must be approved at the annual Town Meeting.

The ordinance is incorporated in the Charter section §2.4.13 with the following MODIFICATIONS:

1. The Charter clarifies the threshold as follows."Any capital project for which the entire project tax burden is more than 5% of the current year total tax burden must be approved by a majority vote of the electors at the Annual Town Meeting "
2. The Charter also allows a petition to a Special Town Meeting rather than the ordinance's requirement that approval must be obtained at the Annual Town Meeting. The Charter states that the decision must occur at the Annual Town Meeting "unless consideration of such project has been petitioned to a Special Town Meeting, or at any referendum to which said meetings may be adjourned, before any funds may be expended for said project."

2. **AN ORDINANCE CONCERNING MEMBERSHIP OF TOWN EMPLOYEES ON TOWN OF LEBANON BOARDS AND COMMISSIONS (May 7, 2007).**

This ordinance allows town employees to be members of the Board of Finance, Planning and Zoning Commission, Zoning Board of Appeals & Inland Wetlands and Watercourses Commission.

The provision of the ordinance are included, UNCHANGED, in the Charter. §7.1 and §8.1

3. **ORDINANCE REGULATING MEMBERSHIP ON NON ELECTED BOARDS AND COMMISSIONS (Dec 4, 2005).**

The ordinance requires all members of boards be residents and registered voters.

The provision of the ordinance are included in the Charter, UNCHANGED for non-elected boards §8.1.

The Charter also EXPANDS the ordinance provision to all elected boards §7.1

4. An Ordinance re: Board of Education Full Election of Membership (April 12, 2008).  
This ordinance allows each political party to nominate as many persons as there are vacancies on the Board of Education and allows electors to vote for all of that number of candidates.

The Charter EXPANDS these provisions to all elected agencies. §7.1

5. AN ORDINANCE CONCERNING CREATION OF A NINE MEMBER BOARD OF EDUCATION (May 20, 1973).  
The ordinance establishes the Board of Education, its membership and terms of office. It also allows voters to vote for no more than a bare majority of candidates for open positions. Note, this voting restrictions was modified in a subsequent ordinance.

The membership and terms of office are UNCHANGED in the Charter sections §7.3.2 and §11.3. The Charter CHANGES the voting restriction. The Charter allows voters to vote for all of the open positions. §7.1

6. AN ORDINANCE PROVIDING FOR THE ELECTION OF ALTERNATE MEMBERS TO THE BOARD OF FINANCE (April 30, 1985).  
The ordinance establishes three alternate members of the Board of Finance and their terms of office. The ordinance also provides that an absent or disqualified regular member designates an alternate member to serve in his / her place. If the absent or disqualified regular member does not make such designation, the majority of the regular members shall make the designation.

Membership of alternates and terms of office are incorporated in the Charter UNCHANGED. §7.3.3 and §11.3

The Charter CHANGES the way in which alternate members are selected to act for an absent member. The Charter adopts a uniform procedure, applying to all boards which have alternate members, that requires the chairman of the board to appoint alternates in rotation. §7.1

7. AN ORDINANCE CONCERNING THE ADOPTION OF ZONING AND PLANNING IN THE TOWN OF LEBANON, CREATING A PLANNING AND ZONING COMMISSION AND PROVIDING FOR ITS APPOINTMENT AND ELECTION. (December 18,1961).  
The ordinance creates both the Planning and Zoning Commission and the Zoning Board of Appeals. The ordinance limits membership by a single party to no more than a "bare majority" which is 4 of 7 for the PZC and 3 of 5 for the ZBA.

Establishment of the PZC and ZBA and their regular membership are UNCHANGED in Charter sections §7.3.4 and §7.3.5

The ordinance's minority party representation provision is CHANGED in the Charter. The membership by a single party is limited according to Charter section §6.2 which incorporates Connecticut General Statute single party limits. Thus allowing 5 of 7 for the PZC and 4 of 5 for the ZBA to have the same political party affiliation.

8. AN ORDINANCE CONCERNING THE TERMS OF THE MEMBERS OF THE PLANNING AND ZONING COMMISSION AND PROVIDING FOR ALTERNATE MEMBERS OF THE PLANNING AND ZONING

COMMISSION (April 30, 1985)

The ordinance provides for alternate members of the combined Planning and Zoning Commission. It also limits regular members to have no more than a bare majority with the same political party affiliation. It specifies that absent members select an alternate to serve in their absence.

1. The Planning and Zoning Commission membership and terms of office are UNCHANGED in the Charter. §7.3.4 and §11.3
2. The following MODIFICATIONS are made in the Charter:
  - i. *The ordinance states that no single political party shall have more than a bare majority of members. That is 4 of the 7 members. The Charter (§6.2) reverts to the Connecticut General Statutes regarding minority representation which limits membership from a single party to no more than 5 of the 7 members.*
  - ii. *The ordinance specifies that a vacancy is filled by the Planning and Zoning Commission. The Charter, using a uniform policy for filling vacancies, specifies that the position is filled by the Board of Selectmen (§7.4 ), with restrictions regarding the political party affiliation and §6.2 minority representation restrictions within 60 days. If the Board of Selectmen cannot fill the position in that time, the Board itself will fill the vacancy with the same minority representation requirements.*

9. ORDINANCE CONCERNING FOUR YEAR TERMS OF REGISTRAR OF VOTERS AND TOWN CLERK (August 22, 1976).

The ordinance establishes that the Town Clerk and the Registrars of Voters are elected positions with four year terms of office.

The Charter incorporates the ordinance UNCHANGED for the Registrars of Voters. §7.3.7 and §11.3

The Charter CHANGES the office of Town Clerk to a hired position §8.2.4

10. REVISED ORDINANCE CONCERNING THE LEBANON COMMISSION ON AGING (August 31, 2007).  
The ordinance establishes the Commission, its membership , terms of office and responsibilities.

The Charter incorporates the membership and terms of office UNCHANGED. §8.1.1 and §11.4  
The Charter EXPANDS the Commission's responsibility by establishing it as the directing agency for the Senior Center.

The Charter ELIMINATES the Commission's responsibility to act as the Town's Agent in securing and disbursing Federal, State, Local and Private funds for Elderly Programs, and in interpreting and implementing related policies and Guidelines. Instead, the Charter assigns the duty to identify such funding opportunities and advising the Board of Selectmen regarding grant requirements, implementing grants and related topics.

The charter also specifies that there be Municipal Agent for the Aging (§8.2.13) which was not in the ordinance.

11. AN ORDINANCE CREATING A CONSERVATION AND AGRICULTURE COMMISSION (March 23, 2012)

The ordinance establishes the commission, its membership, terms of office, it's purpose and its duties.

The membership provision of the ordinance is MODIFIED in the Charter §8.1.2. The ordinance states that the commission shall include one non-voting student in the Agricultural Science department of Lyman Memorial High School. The Charter states the commission may include one non-voting member under the age of 18 years.

The Charter MODIFIES the statements concerning the commission's purpose and duties: The description is abbreviated.

12. REVISED ORDINANCE FOR THE ESTABLISHMENT OF AN ECONOMIC DEVELOPMENT COMMISSION (August 31, 2007).

Commission membership is included, UNCHANGED, in the Charter. §8.1.3

The ordinance is silent regarding appointment schedule of alternate members. The Charter defines overlapping terms of office of Alternate members with appointments in the first, third and fifth year of every 5 year cycle. §11.4

13. AN ORDINANCE CONCERNING THE CREATION OF AN INLAND WETLAND COMMISSION FOR THE TOWN OF LEBANON (June 28, 1974)

The ordinance establishes the Commission, its membership, terms of office, duties and requirements for Public Hearings.

The Charter includes the ordinance provision, UNCHANGED, in the Charter. §8.1.4

14. (REVISED ORDINANCE) AN ORDINANCE CONCERNING CREATION OF AN INLAND WETLAND COMMISSION FOR THE TOWN OF LEBANON (September 6, 1989)

The ordinance establishes the Commission, its membership, terms of office, duties and requirements for Public Hearings.

The Charter includes the ordinance provision, UNCHANGED, in the Charter. §8.1.4

15. AN ORDINANCE CREATING A RECREATION COMMISSION FOR THE TOWN OF LEBANON (January 4, 1975).

The Recreation Commission membership and terms of office are UNCHANGED in the Charter. §8.1.5 and §11.4

The Commission duties are MODIFIED in the Charter. The ordinance states that the Commission has the authority to appoint a superintendant or director. The Charter states that the Commission has the power to recommend the appointment of a superintendant or director to the Board of Selectmen. The Board of Selectmen is the hiring agent for all Town employees according to §8.2, the uniform hiring and personnel policy of the Charter.

16. ORDINANCE FOR THE ESTABLISHMENT OF A CEMETERY COMMISSION FOR THE TOWN OF LEBANON. (July 20, 2010).

The ordinance is incorporated, UNCHANGED, in the Charter §8.1.6

17. AN ORDINANCE FOR THE ESTABLISHMENT OF THE LEBANON COMMISSION FOR CHILDREN AND

FAMILIES (September 13, 1994).

The ordinance establishes the commission, its membership terms of office and its responsibilities.

The membership provision of the ordinance is MODIFIED in the Charter §8.1.7 and §11.4. The ordinance states that the commission shall include two non-voting adolescent members. The Charter states the commission may include such members.

18. AN ORDINANCE FOR THE ESTABLISHMENT OF THE WATER POLLUTION CONTROL AUTHORITY (January 5, 2009).

The Ordinance is incorporated in §8.1.9 and §11.4 with the following MODIFICATION: The ordinance states that the WPCA shall "employ an agent or other employees to carry out its duties". Under uniform personnel policies, the charter establishes the Board of Selectmen (§8.2) as the official hiring authority for the Town.

19. AN ORDINANCE CREATING A LOCAL EMERGENCY PLANNING TEAM (August 31, 2007).

The ordinance establishes that the Chief Executive Officer (the First Selectman) assumes control in a declared emergency, creates a Local Emergency Planning Team and an Emergency Management Director and Deputy Emergency Management Director. It also requires the Emergency Management Director to perform duties in accordance with State Department of Homeland Security procedures

The Charter includes these provisions UNCHANGED. The Emergency Planning Team is established, its duties defined and the role of the First Selectman are established in §8.1.10. Emergency Management Director is in §8.2.10.

20. ORDINANCE REPEALING THE ORDINANCE CREATING A MUNICIPAL FLOOD AND EROSION CONTROL BOARD FOR THE TOWN OF LEBANON AND DESIGNATING BOARD OF SELECTMEN AS THE TOWN'S FLOOD AND EROSION CONTROL BOARD (May 23, 2014)

The ordinance designates the Board of Selectmen as the Town's Flood and Erosion Control Board.

The provisions of the ordinance are included UNCHANGED in the Charter. §8.1.11

21. AN ORDINANCE DISSOLVING THE BOARD OF HISTORICAL PRESERVATION FOR THE JONATHAN TRUMBULL JR. HOUSE MUSEUM AND DESIGNATING BOARD MEMBERS AS TRUSTEES FOR THE JONATHAN TRUMBULL JR. HOUSE MUSEUM, LLC (September 10, 2015)

The ordinance establishes the Board of Trustees, membership and terms of office. The ordinance also specifies the responsibilities of the Board.

The Charter includes provisions of the Ordinance UNCHANGED in §8.1.12 regarding membership and duties and in §11.4 regarding terms of office.

22. AN ORDINANCE PROVIDING FOR THE NUMBER OF JUSTICES OF THE PEACE (April 8, 1996).

Provisions of the ordinance are incorporated, UNCHANGED, in the Charter. §8.1.13

23. ORDINANCE RE: TAX ASSESSOR (April 12, 2008).

The ordinance establishes the position of Tax Assessor, specifies qualifications, authorizes the Board of Selectmen to appoint and establish compensation, and authorizes the Tax Assessor to have an assistant according to Connecticut General Statutes §9-198 and §12-40a.

The Charter incorporates the ordinance provisions UNCHANGED in §8.2.2 establishing the position as required by Connecticut General Statutes and includes salary provision under Charter section §8.2.

24. AN ORDINANCE CONCERNING A FOUR YEAR TERM OF OFFICE FOR THE TAX COLLECTOR (Sept 13, 1994).

The ordinance establishes the Tax Collector as an elected office with four year term of office.

The charter CHANGES the ordinance by establishing the Tax Collector as a hired position. §8.2.3

25. AN ORDINANCE CONCERNING THE SALARY OF THE TOWN CLERK (July 24, 1984).

The ordinance specifies that the Town Clerk is to receive a salary in lieu of all fees and other compensation. The salary is fixed by the legislative body of the Town.

The Charter MODIFIES the salary provision. Under the Charter, the Town Clerk is a hired position §8.2.4 , and as such the compensation is set by the "uniform personnel and compensation" policies established by the Board of Selectmen. §8.2.

26. AN ORDINANCE FOR THE ESTABLISHMENT OF A REGIONAL ANIMAL CONTROL SERVICES (July 20, 2010)

Animal Control Services is addressed in §8.2.7 and §8.2.

Provision of the ordinances are incorporated in the Charter in EXPANDED form: The ordinance establishes a regional services with the towns of Bozrah, Franklin and Sprague. The Charter establishes Animal Control Services as a required function (§8.2.7 ) and authorized the Board of Selectmen to establish such services (§8.2) without restriction to the towns named in the ordinance.

27. A REVISED ORDINANCE PROVIDING FOR THE APPOINTMENT OF CONSTABLES FOR THE TOWN OF LEBANON IN LIEU OF CONSTABLES TO BE ELECTED AT THE REGULAR TOWN ELECTION (May 7, 2007).

The ordinance specifies that Constables are to be appointed for two (2) year terms by the Board of Selectmen.

The Charter MODIFIES the ordinance: The Charter, §8.2.14, makes provision for the Town to provide police services "as required by Connecticut General statutes..." It does not specify that Constables are appointed by the Board of Selectmen nor does it specify terms of such appointments .

### 3. Recommended new ordinances and other actions.

1. The Charter establishes a Solid Waste Commission as provided in the ordinance "A REVISED ORDINANCE REGULATING THE USE AND OPERATION OF THE SOLID WASTE FACILITY (May 24, 2002)." The Charter establishes this Commission (§8.1.8) but does not repeal the Ordinance of 2002 because the ordinance also specifies regulations for the solid waste facility which should remain in effect. Therefore it is recommended that the Board of Selectmen pass a new Ordinance containing only the regulations and fees and repeal the existing ordinance.
2. The Charter provides that any agency may adopt bylaws and rules for its operation and that they be filed with the Town Clerk. It is recommended that agencies with existing bylaws review them and file them with the Town Clerk.
3. It is recommended that the Board of Selectmen review all existing ordinances for compliance with the Charter.
4. It is recommended that the Town web site be reviewed for consistency with the Charter.
5. It is recommended that the Board of Selectmen conduct several public forums to familiarize the public with the proposed Charter and to foster discussion throughout the year before the 2016 referendum on the Charter.

## **4. Overview of major features.**

### **The basic form of government**

The Charter maintains the traditional Town Meeting / Selectmen form government as specified in Article 2 of the Charter. All current boards, commission, committees and authorities are preserved.

For the most part, the proposed Charter specifies that we keep doing things the way we do them today. However, it proposes modifying some procedures and organizational structures that have been viewed as problematic in the past or may likely be problematic in the future. It clarifies areas of responsibility and operating procedures that are currently ill-defined or inconsistent.

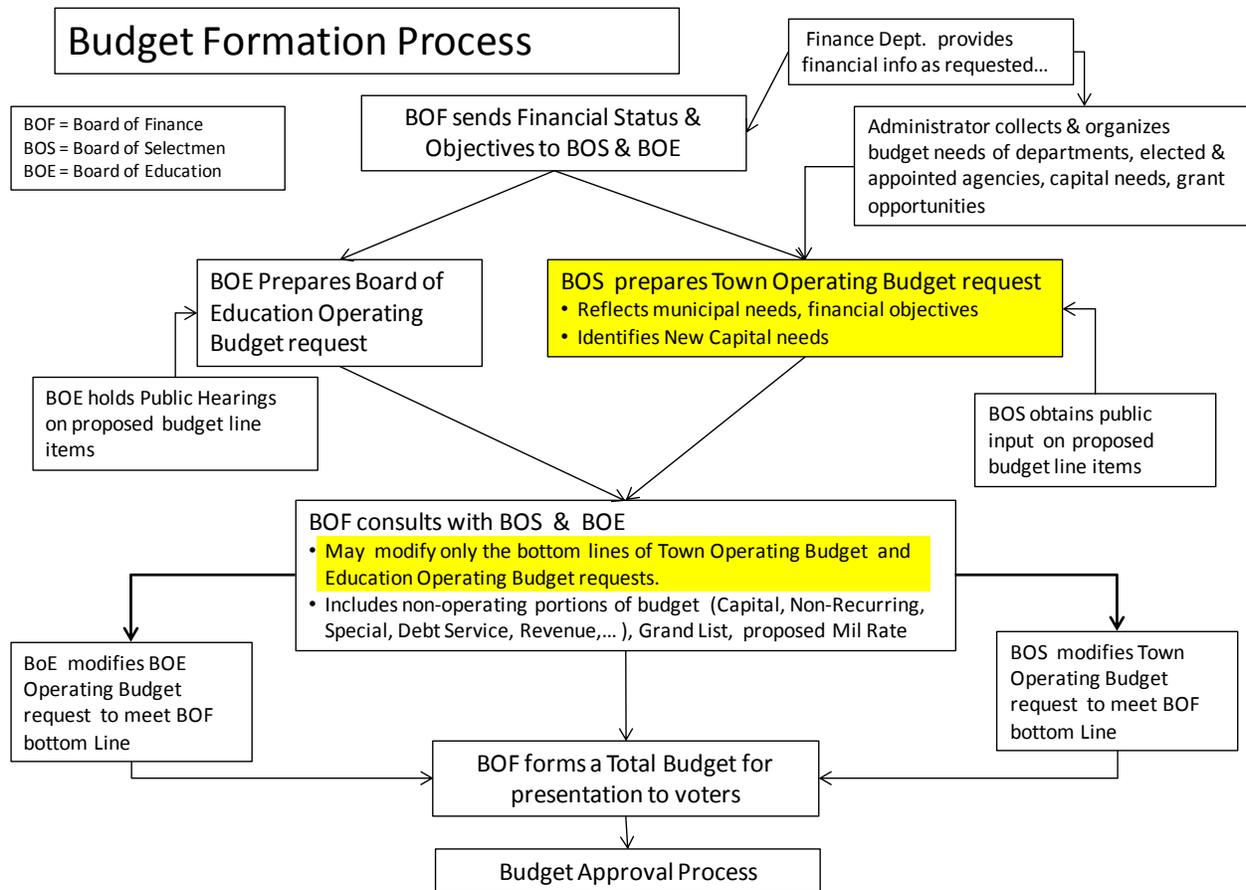
### **Formation and approval of the annual budget.**

The most significant proposed change regarding the budget is *the way* in which the proposed municipal budget is formed and approved. In short, the Board of Selectmen is charged with taking a larger role in forming the line-by-line details of the budgets affecting daily operations of the town. The formation of the Education Budget remains as it is now, which is prescribed by Connecticut State Statute.

Under the proposed charter, the Board of Selectmen, utilizing the services of the Town Administrator, will coordinate, prioritize and prepare a Town Operating Budget which consists of all agencies and departments of Town government. That includes all boards, committees, commission and departments. The Board of Finance can then modify the bottom line of the requested Town Operating budget, considering over-all fiscal considerations. -The budget formation process for the Board of Education budget remains unchanged, except that if revisions to its bottom line are made by the Board of Finance, the line item changes to achieve the revised bottom line would be identified.

All other Board of Finance responsibilities remain unchanged.

A schematic representation of the budget formation process is shown in Figure 1 with the changes from current practice highlighted.



**Figure 1. The budget formation process.**

### Approval of the Budget.

The proposed process is, for the most part, the same as current practice. The exceptions are

- If the budget is rejected at the Annual Town Meeting, the Board of Finance can alter the total expenditures (the bottom line) in the Board of Education, Town Operating Budget or the Capital/Non-recurring and Contingency budgets after due consideration of public comments at the Town meeting and after consultation with the Board of Education and Board of Selectmen. The Board of Education and Board of Selectmen then alter the details of their line-by-line budgets accordingly.
- If the budget is sent to a referendum, specific advisory questions must be included on the ballot, asking if the major portions of the budget are too high, too low or acceptable. The results of the referendum and advisory questions must be published and considered in any revision to the proposed budgets. These specific questions are intended to reduce the ambiguity of questions that have been used in the past. Any revisions to the proposed budget must follow the same procedure as above.

A schematic representation of the budget approval process is shown in Figure 2 with the changes from current practice highlighted. Figure 3 illustrates the entire process for just the Town Operating Budget.

# Budget Approval Process

BOF = Board of Finance  
 BOS = Board of Selectmen  
 BOE = Board of Education

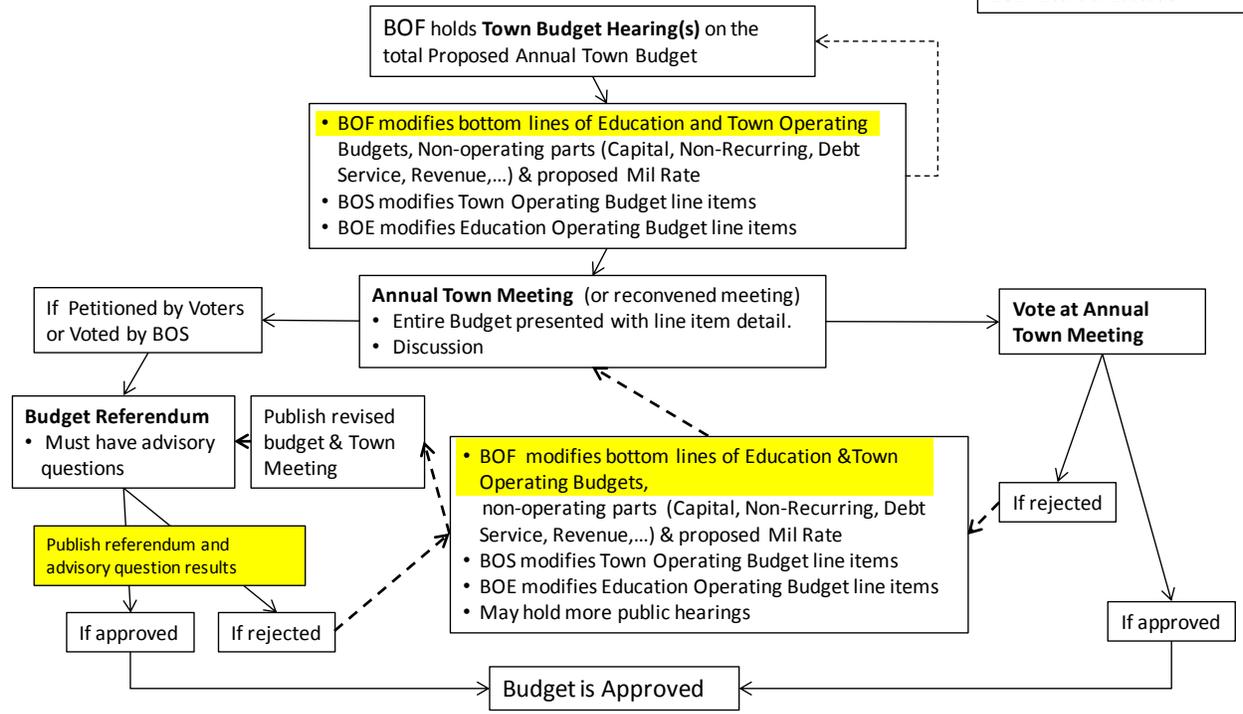
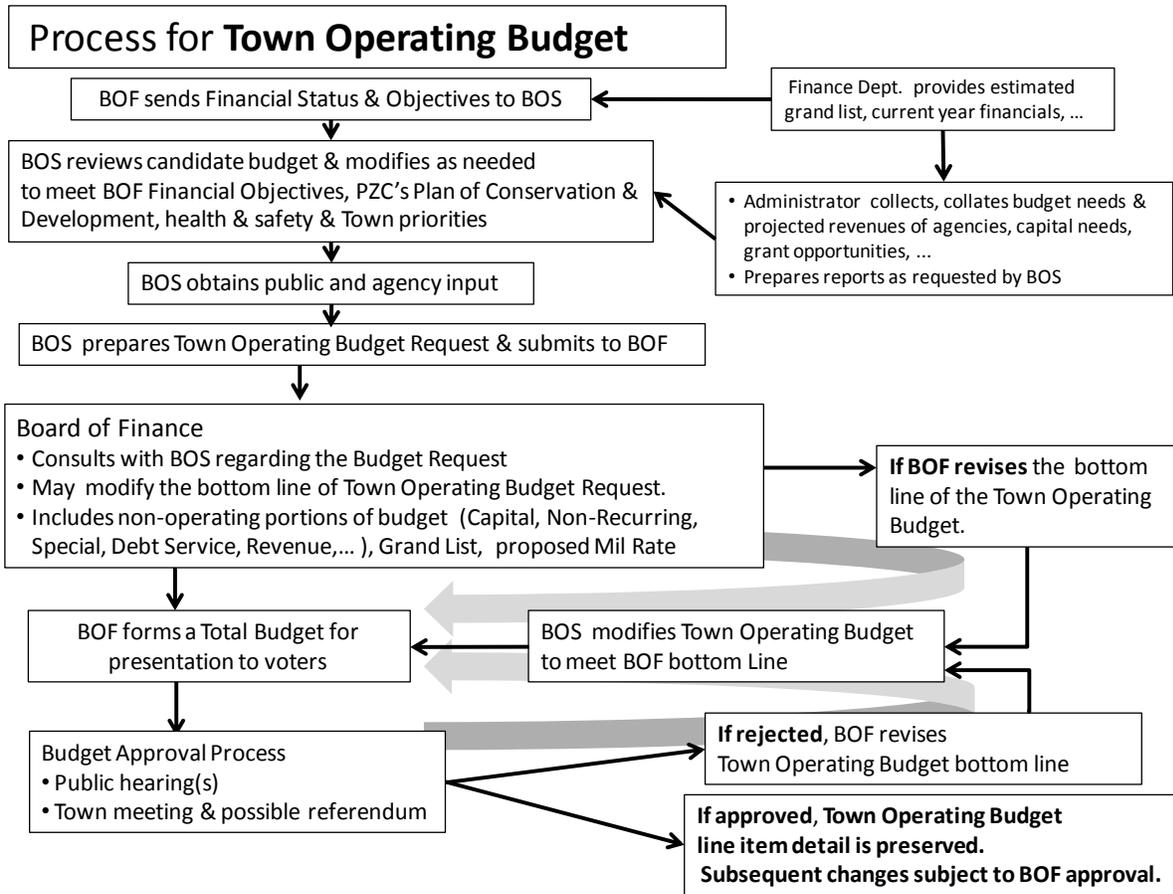


Figure 2. Budget approval process.



**Figure 3. Entire budget process for the Town Operating Budget.**

**Hiring, rather than electing, three professional, non-policy-making officials.**

The proposed Charter would change the Town Clerk, the Tax Collector and the Treasurer to hired positions instead of them being elected. The intent of the Charter is to permit selecting individuals for these positions based on specific technical and professional skills.

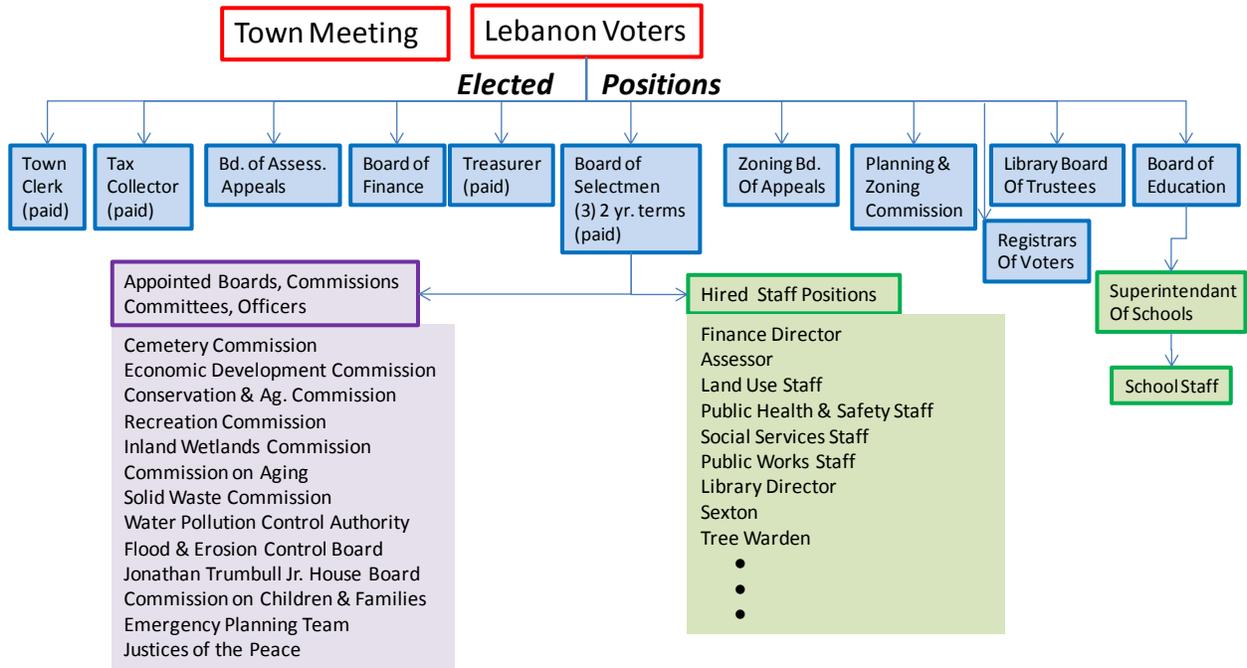
**Five (5) member Board of Selectmen.**

The proposed Charter would institute a 5 member Board of Selectmen with 4 year overlapping terms rather than the current practice of 3 Selectmen with 2 year terms. As with current practice, the First Selectman is one of the voting members of the 5 member board. The proposed change to 5 members with staggered terms ensures some measure of continuity across years, and broadens the representation of the citizens. It also allows a more diverse perspective on town affairs and policy direction by having more voices on the Board.

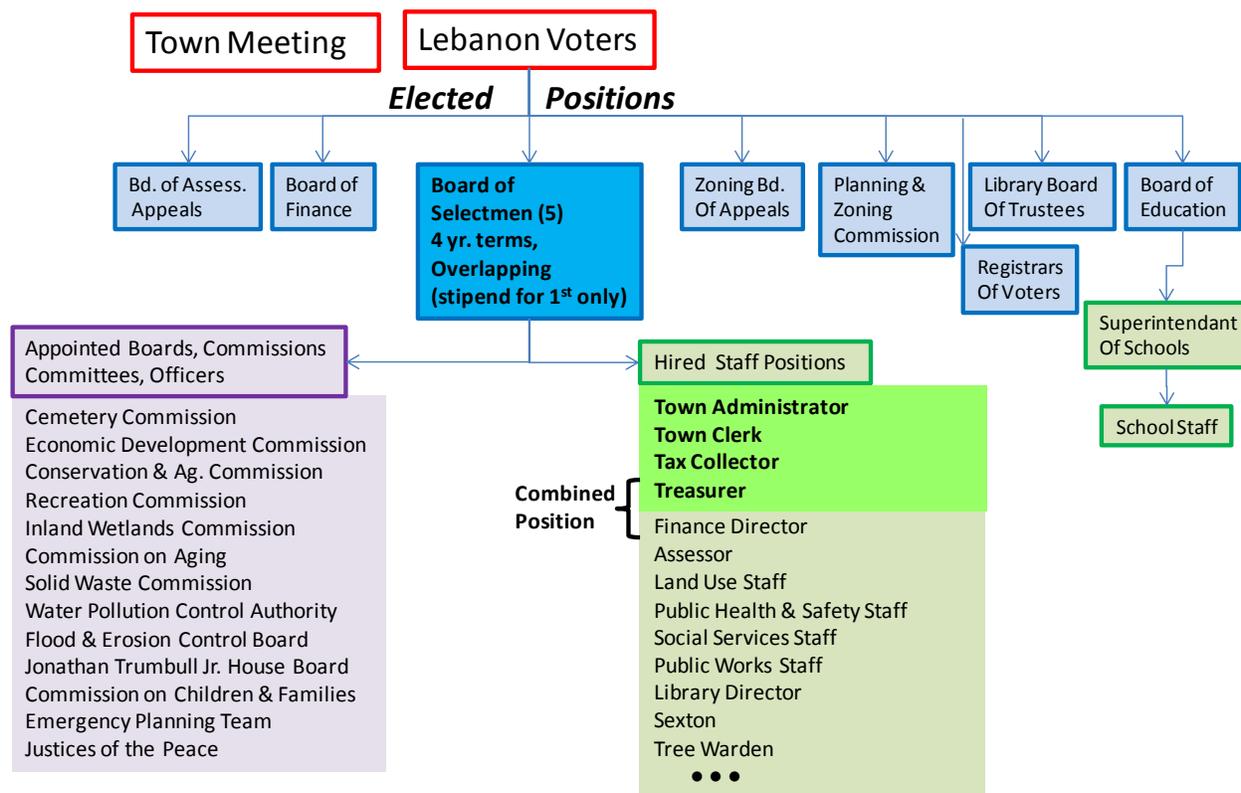
Under the proposed Charter, only the First Selectman would receive a salary and it is the recommendation of the Charter Commission that the Board of Selectmen reduce the salary from the current level because the duties would be less demanding due to the addition of a Town Administrator.

The following figures contrast the current and proposed organization structure of Town government.

## Current Organization of Town Government



## Proposed Organization of Town Government



### A Town Administrator

The proposed Charter would create a new, hired position in Lebanon: a Town Administrator. The Town Administrator would perform many of the “operational”, day-to-day duties that are currently handled by the First Selectman. The Board of Selectmen would set job requirements and salary of the Administrator. The administrator carries out the policies and priorities of the Board of Selectmen, reports to them and has annual performance reviews. The Administrator serves at the pleasure of the Board of Selectmen.

### Policies regarding hiring and dismissal of employees (other than Board of Education)

The proposed Charter would establish uniform personnel, hiring and compensation policies for all hired positions except those in the Board of Education which are their sole responsibility by State law.

The Charter requires the Board of Selectmen to consult the board, commission, committee or department in which the employee is to serve regarding job requirements. The agency is specifically empowered to identify candidates, conduct interviews and recommend candidates using the fair labor practices established for all town employees.

### **Uniform policy regarding filling vacancies in elected agencies.**

Under current practice, vacancies in elected Boards and Commissions are not filled in a consistent manner. In addition different boards and commissions use different procedures for assigning alternate members to fill-in for a member who is absent from a meeting. Connecticut State law is not clear on the procedures and in fact in some cases different legal interpretations of the law have been given. The proposed Charter remedies this situation by providing a uniform policy for filling vacancies and for appointing Alternate Members to perform the duties of a absent or disqualified regular member.

#### **Filling a vacancy**

This situation is created by a regular member resigning, moving out of town or permanently being unable to continue serving in the position. In this case, the proposed Charter specifies that the vacancy be filled by the Board of Selectmen appointing a new member in a prescribed manner:

1. The Board of Selectmen must first attempt to fill the vacancy with an Alternate Member of the Board or Commission if there are alternate members with the same political affiliation as the member creating the vacancy.
2. If there is no alternate member meeting these requirements, or if a qualified alternate is unwilling to serve, the Board of Selectmen will appoint a new member from the general electorate with the same political party affiliation.
3. In all cases, Connecticut laws ensuring minority party representation shall prevail.
4. If the Board of Selectmen fails to make an appointment within 60 days, then the Board or Commission shall appoint an elector to fill the vacancy according to the same rules.
5. The vacancy is filled only until the next biennial election when a replacement is elected to fill the remainder of the term of the member who created the vacancy.

#### **Filling in for an absent or disqualified regular member.**

If a regular member of an elected Board or Commission (except the Board of Finance) is absent or cannot participate in a meeting, the Chairman of the Board or Commission will designate an alternate member to fill-in choosing alternate members in rotation (regardless of party affiliation), such that all alternates serve an equal number of times as nearly as possible. In other words, the alternates “take turns” filling in regardless of their party affiliation. Rules for appointing an alternate to act in the Board of Finance is the same as current practice which is prescribed by Statutes.

### **Checks & balances: duties and powers of officials & agencies**

The proposed Charter contains numerous forms of checks and balances to ensure that power is not concentrated in single individuals, boards, commissions and committees. These provisions appear throughout the document although several Articles of the Charter are devoted exclusively to defining the Duties and Powers and Limits of Powers of agencies and officials.

### **General features and transition**

The proposed Charter contains several features that provide consistency, streamlined processes and transition to operating under the Charter.

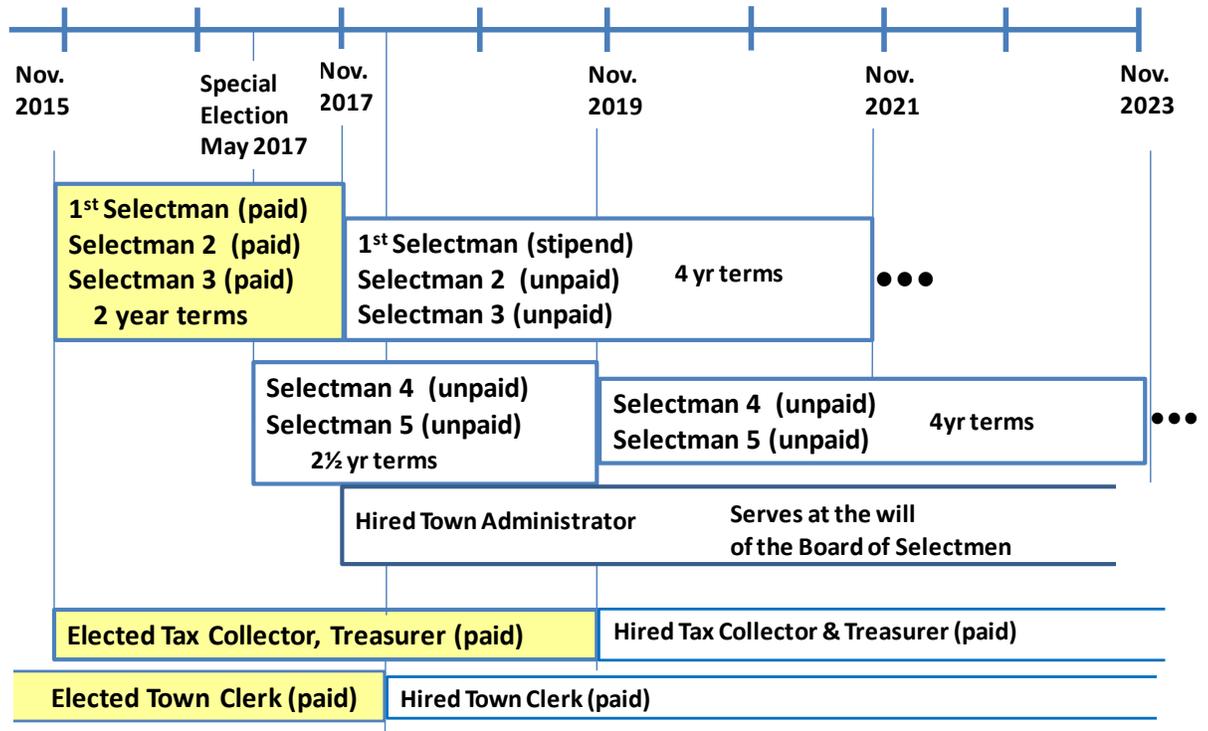
1. The Connecticut General Statute minority representation rules are adopted for all agencies. This change will affect only the Planning and Zoning Commission and the Zoning Board of Appeals. Under the current Ordinances of December 18, 1961 and April 30, 1985, these boards cannot have more than a bare majority of members with the same political party affiliation. That is, the

Planning and Zoning Commission can currently have 4 of 7 members with the same political party affiliation. Under the Charter, 5 of the 7 members could have the same affiliation. The Zoning Board of Appeals can currently have 3 of 5 members with the same political party affiliation. Under the Charter, 4 of the 5 members could have the same affiliation.

2. To provide a more uniform appointment schedule and overlap of terms the Charter would change the appointment schedules for three appointed agencies as follows.
  - a. The Economic Development Commission. The Ordinance of August 31, 2007 specifies 3 alternate members each with 5 year terms but is silent regarding their appointment schedule. The Charter defines overlapping alternate terms of office with appointments in the first, third and fifth year of every five-year cycle.
  - b. The Water Pollution Control Authority currently has 7 members each with 3 year terms. Terms expire in an irregular pattern. The Charter would appoint two members each year with an additional appointment every third year.
  - c. The Solid Waste Commission. The Ordinance establishing the Commission specifies one alternate member with a 1 year term and one alternate member with a 2 year term. The Charter would have 2 alternates each with 3 year terms. One alternate member is appointed in the first and third year of every three-year cycle.
3. The Charter would make the effective date of all new ordinances 21 days or later after passage.
4. The referendum on the Charter is expected to be held on the same day as the 2016 general election. If the Charter is approved, Article 11 provides details of transition to operation under the Charter. Other than these transition provisions explained below, all parts of the Charter will become effective seven (7) days after the 2016 general elections.
  - a) The Charter does not terminate the terms of a previously elected officials. Currently elected officials and officials elected on November 3, 2015 will remain in office until their elected terms of office expire.
  - b) In November 2015, a First Selectman and two Selectmen will have been elected, each with two year terms of office and each with previously established compensation. The First Selectman will have the traditional duties of the First Selectman in the day-to-day operation of the Town. Transition from the newly elected 3 member Board of Selectmen to a five member board is accomplished by requiring a special election no later than May 30, 2017 for two additional Selectmen each with terms ending in November 2019. This provision will establish a 5 member board with staggered 4 year terms.
  - c) The position of Town Administrator becomes effective not later than 14 days after the 2017 biennial election when a First Selectman and two Selectmen each with 4 year terms will be elected.
  - d) Transition from elected to hired Town Clerk, Tax Collector and Treasurer occurs when their terms expire or until their positions become vacant for any reason.
  - e) Article 11 also specifies when elections and appointments are to be made for all elected and appointed agencies. These provisions have been coordinated with current practice and schedule except as noted in item 2 above.

The following figure illustrates the transition process. The highlighted sections identify those officials who will be newly elected in November 2015 and the present Town Clerk whose term does not expire until January 2018.

## Transition to 5 Selectmen with overlapping terms, & Hired Administrator, Town Clerk, Tax Collector Treasurer



### 5. Ideas for future consideration.

The Charter Commission considered several ideas that were not included in the proposed Charter. These ideas and issues are presented here for future consideration.

1. Consider providing for “Minor” and “Major” Ordinances to streamline the day-to-day operation of the Town. A Major Ordinance is one that has significant impact on the character of the Town or impacts a permanent agency or office and would require a vote at a Town Meeting. A Minor Ordinance is one that affects only the daily operations or maintenance of order in the Town and could be enacted by the Board of Selectmen after a Public Hearing. Provisions for overrule of a Minor Ordinance are also suggested.
2. Consider using some administrative services jointly for municipal and Board of Education to capture efficiencies and depth of expertise. Specifically in the areas of finance, accounting, maintenance.
3. Consider adopting enabling language that would allow the Town to form trusts.
4. Consider allowing a specific mechanism for unaffiliated voters to be included on the ballot in addition to the current mechanism of write-in candidate or registering with the Secretary of the State prior to inclusion in the ballot.
5. Consider allowing appointment of unaffiliated voters to fill vacancies of major party members.

6. Consider appointing Registrars of Voters since each major political party must have a registrar and there has been only one candidate from each party.
7. Consider establishing a code of ethics.
8. Consider establishing an advisory committee regarding investment practices of trusts.
9. Consider including a overview description of duties of all agencies along with the complete legal description or reference to Connecticut General Statute (when applicable)

## 6. Legal opinion regarding budget provisions



HUGHES GRIFFIS  
EDWARD B. O'CONNELL  
TRACY M. COLLINS\*  
PHILIP M. JOHNSTONE+\*  
CHARLES C. ANDERSON  
KERIN M. WOODS+  
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January 15, 2015

VIA EMAIL  
HARD COPY TO FOLLOW BY US MAIL

+ ALSO ADMITTED IN RI  
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Mr. Thomas Meyer, Chairman  
Lebanon Charter Commission  
196 Bogg Lane  
Lebanon, CT 06249

Re: Budget Provisions of Proposed Town Charter

Dear Mr. Meyer,

In connection with our review of the Dec. 12, 2014 draft version of the proposed Lebanon Town Charter ("Charter"), you have asked for our advice as to whether the provisions of Article 9.5.1, entitled "Duties of the Board of Finance regarding the Budget" are authorized by Connecticut law pertaining to the municipal appropriation and budget-making process.

More particularly, your inquiry raises two questions:

1 – whether the language contained in Article 9.5.1 to the effect that the "Board of Finance shall only have the authority to change the total appropriations requested" is superseded by Connecticut General Statutes §§7-344 and 7-345, which address the manner in which Connecticut town budgets are to be formulated and adopted; and

2 – whether the role of the Board of Finance in the budget formulation and adoption processes, as outlined in Article 9.5.1, is superseded by the above-referenced statutes and/or unreasonably interferes with the Board's ability to perform its duties.

By way of disclaimer, we are not aware of any Connecticut case law directly addressing a town charter provision which eliminates the ability of that town's board of finance to make revisions to line items in a town budget. In delivering this opinion, we

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are relying on the Connecticut General Statutes and case law which we believe to be applicable.

#### STATUTORY BACKGROUND

Analysis of three Connecticut statutory schemes is necessary to address the issues involved in the current situation.

Connecticut General Statutes Chapter 106 (§7-340 et seq.) is entitled "Town Board of Finance", and addresses the establishment and operation of boards of finance created by Connecticut municipalities. §§7-344 and 7-345 of Chapter 106 delineate procedures for the preparation and adoption of local budgets by boards of finance. This general description, however, must be tempered by decisions of the Connecticut Supreme Court, discussed below, which have held that state statutes cannot deprive towns of the right to determine matters of purely local law, such as town budget processes.

Connecticut General Statutes Chapter 98 (§7-148 et seq.) is entitled "Municipal Powers". §7-148 addresses the scope of municipal powers; subsection (c) provides that a municipality shall have the power, in addition to all powers granted to municipalities under the Constitution and general statutes, to "Establish and maintain a budget system".

Connecticut General Statutes Chapter 99 (§7-187 et seq.) is entitled "Municipal Charters and Special Powers", and is commonly called the "Home Rule Act." §7-194 provides, generally, that a town with an adopted charter has the power to manage, regulate and control its finances.

#### CASE LAW

In Board of Education of the Town of Naugatuck v. Town of Naugatuck et al, 268 Conn. 295, 843 A.2d. 603 (2004), the Connecticut Supreme Court addressed the question of whether Connecticut General Statutes §7-344 superseded a conflicting provision in the Naugatuck town charter. In holding that the town charter was not superseded by the conflicting statute, the court stated that the "purpose ... of Connecticut's Home Rule Act is clearly twofold: to relieve the General Assembly of the burdensome task of handling and enacting special legislation of local municipal concern

and to enable a municipality to draft and adopt a home rule charter or ordinance which shall constitute the organic law of the city.... The rationale of the act, simply stated, is that issues of local concern are most logically answered locally, pursuant to a home rule charter, exclusive of the provisions of the General Statutes.... Moreover, home rule legislation was enacted to enable municipalities to conduct their own business and [to] control their own affairs to the fullest possible extent in their own way ... upon the principle that the municipality itself kn[ows] better what it want[s] and need[s] than ... the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs."

In the Naugatuck decision, the Connecticut Supreme Court reaffirmed three prior related decisions. In Caulfield v. Noble, 178 Conn. 81, 420 A.2d 1160 (1979), the court held that §7-344 did not preempt a town charter provision that conflicted with that statute's budget setting procedures. The opinion in Naugatuck noted that "Although the dispute in Caulfield centered on a different provision of §7-344 than the dispute in the present case does, essential to our holding in Caulfield was the predicate conclusion that matters concerning a town budget are of local rather than statewide concern. We therefore held, on the basis of this predicate conclusion, that general laws pertaining to such matters, such as General Statutes §7-344, do not supersede the provisions of home rule charters or ordinances on the same subject..." (Emphasis added.)

In cases subsequent to Caulfield, Shelton v. Commissioner of Environmental Protection, 193 Conn. 506, 479 A.2d 208 (1984), Windham Taxpayers Assn. v. Board of Selectmen, 234 Conn. 513, 662 A.2d 1281 (1995), and the Supreme Court reaffirmed its determination in Caulfield that, in areas of local concern, such as local budgetary policy, general statutory provisions must yield to municipal charter provisions governing the same subject matter. At the conclusion of the discussion in Naugatuck on these prior cases, the Court stated that "[W]e therefore see no reason why our conclusion in Caulfield is not equally applicable to the other provisions of §7-344..."

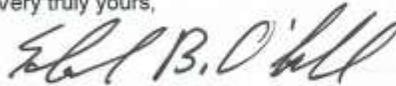
This case law interpreting the above-referenced statutes makes clear that (1) town budget processes are purely local matters, and (2) these statutes do not supersede a town's right to make its own rules to govern its own purely local matters.

#### CONCLUSION

The budget formation and approval processes set forth in the December 12, 2014 draft Charter are the proper subject of a home rule charter, and are not superseded by the provisions of the General Statutes. A town with a duly adopted charter is authorized to define the role of its board of finance as contemplated in Article 9.5.1 of the Charter.

If you have any questions or comments, we would be pleased to respond.

Very truly yours,



Edward B. O'Connell, of  
Waller, Smith & Palmer, P.C.

EBO:cmc

# 7. The Proposed Charter