

Proracegear

From: "Beverly Perry" <BPerry@k-plaw.com>
To: <info@proracegear.com>
Sent: Monday, July 06, 2009 2:25 PM
Attach: local charter procedures.pdf; warh res reqts.pdf
Subject: FW: Charter Review Committee Questions
Attention: Alan Flavin - below you will see the email sent to Mary Ann Silva and two attachments above. Please confirm receipt. Thank you.

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-----Original Message-----

From: Lauren F. Goldberg
Sent: Monday, July 06, 2009 1:58 PM
To: Beverly Perry
Subject: FW: Charter Review Committee Questions

Lauren F. Goldberg, Esq.
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-----Original Message-----

From: Lauren F. Goldberg
Sent: Friday, July 03, 2009 01:51 PM Eastern Standard Time
To: 'Mary Ann Silva'
Cc: Richard Bowen
Subject: RE: Charter Review Committee Questions

Mary Ann,

You have asked several questions. I have responded to each question, in turn, below.

1. When and if we accept Plan B, can we make major changes to the initial plan or do we have to accept it as is, keep it in effect for a year and then make those changes?

The Home Rule Amendment to the Massachusetts Constitution, adopted in 1966, authorizes municipalities to adopt or amend charters in a particular manner. Thus, after 1966, a municipality may not simply adopt one of the "Plan" forms of government as set forth in G.L. c.43. Instead, municipalities seeking to adopt or amend a charter must use the provisions of the so-called Home Rule Procedures Act (G.L. c.43B), or petition the General Court for special legislation in accordance with Section 8 of the Home Rule Amendment. This analysis is confirmed by the Secretary of the Commonwealth on page 6 of his booklet entitled, "Local Charter Procedures," which provides, in part, "Before 1966, some cities adopted one of the "plan" city charters which the state Legislature made available (Plans A, B, C, D, E or F). These plan charters may now be adopted or changed only" pursuant to the provisions of the Home Rule Procedures Act or special legislation.

Accordingly, in my opinion, if the Town seeks to change its current form of government to a form similar to a "Plan B" form of government (a Mayor/Council form) as set forth in G.L. c.43, it may not utilize the procedure set forth in G.L. c.43. Instead, the Town may accomplish the same using either an elected charter commission in accordance with the process established by G.L. c.43B, or by requesting special legislation. As you know, however, a charter commission elected in accordance with the provisions of G.L. c.43B could propose any amendments to the Town Charter or changes in the Town's form of government that it deemed appropriate, and would not be constrained to recommend a Mayor/Council form.

2. In order to change Wareham's form of government, do we do it by elected Commission or by Special Act?

As we discussed when I met with the Charter Review Committee, the question of how to amend the Town Charter is a policy question ultimately answerable only by the Town itself, and is often dictated by the subject matter of the proposed amendments. I have set forth below a brief summary of the different ways to amend a Town Charter.

G.L. c.43B Revision:

Revisions to a town charter that relate in any way to the composition, mode of election or appointment, or terms of office of the "mayor or city manager, or the board of selectmen or town manager," may be

placed directly on the ballot only by a charter commission elected in accordance with the process set forth in G.L. c.43B. To initiate the statutory charter revision process, a petition must be circulated to place the question on the ballot of electing a charter commission. See G.L. c.43B, §1. Please note that the Board of Selectmen may not place this binding question on the ballot on its own initiative, as G.L. c.43B allows the charter commission process to be initiated only by petition. Candidates for charter commissioner are elected at the same election at which the question appears. Many technical requirements apply to the circulation and submission of the petition for election of a charter commission, and to the obligations of a charter commission once elected.

The elected charter commission must hold certain hearings, prepare a preliminary and final report, and forward information regarding proposed changes to the Attorney General and the Department of Housing and Community Development. The proposed revision then appears on the ballot at the next occurring annual town election held at least two months after the date of the final report. The board of selectmen is required to send copies of the proposed revision to the residences of the Town at which one or more registered voter resides at least two weeks prior to the date of the election at which the question will appear on the ballot.

G.L. c.43B Amendment:

Amendments to a town charter that do not relate to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager, so called "minor" charter changes, may be placed on the warrant for town meeting by the board of selectmen or by petition. G.L. c.43B, §10(a). Additionally, a charter amendment "suggestion" process exists requiring a public hearing process; however, in my experience, such process is used only infrequently. G.L. c.43B, §10(b).

Amendments to a town charter proposed pursuant to the provisions of G.L. c.43B, §10, require initial approval by a two-thirds vote of town meeting and approval by the Attorney General as "not inconsistent" with state laws and constitution. The proposed amendments must also be forwarded to the Department of Housing and Community Development. If the Attorney General approves the form of the amendment (referred to as an "order"), it becomes effective four weeks after submission to the Attorney General. Thereafter, the amendment must be presented to the voters at the next annual town election occurring at least two months after the effective date of the "order." Additionally, the board of selectmen must, at least two weeks prior to the election at which the ballot question will be considered, send to all residences of the Town with one or more voters a final copy of the report of the commission or proposed charter amendment.

The above discussion of G.L. c.43B is simply an outline of a more complicated process. For details, please review the Secretary of State's booklet regarding charter amendments (attached hereto) and G.L. c.43B.

Special Act:

A town may also amend a town charter by requesting a special act of the General Court. Pursuant to Section 8 of the Home Rule Amendment the General Court may make laws relative to a single municipality upon petition of that municipality. Accordingly, in order to request special legislation amending a municipal charter, as with any other special legislation, town meeting must authorize the board of selectmen to petition the General Court for the same. A simple majority vote of town meeting is required to approve a request for special legislation. Once approved by town meeting, the board of selectmen petitions the General Court by transmitting the approved request for special legislation to the Town's state representative.

While the Massachusetts Constitution does not require that such a special act be accepted by the voters at an election, as a matter of practice the General Court often requires that such legislation be accepted by the voters of the town at an election. This is the case particularly in those instances when the special legislation will involve a change in the powers and duties or terms of any elected official or otherwise involves any of the subjects that would require election of a charter commission under the provisions of G.L. c.43B. Depending on the form of the special legislation, such amendments may be presented to the voters of the Town at an annual or special town election.

3. When we do change government to Mayor/council - how is the mayor's term setup. Can we make it a four-year term from the beginning or do we have to wait one cycle before we extend his term?

If the Committee recommends a change to a Mayor and Council form of government, there will be many substantive issues that the Committee will need to consider, including the term of the Mayor. In my opinion, the terms of the Mayor and Councilors are integral to the overall structure of a Mayor/Council form of government and it makes sense to establish such terms as part of the initial proposal, rather than change the terms after the new form of government is established. That being said, if an initial recommendation is made and adopted by the Town (regardless of the process used to amend the Town Charter), and later it becomes apparent that changes should be made, or would otherwise be desirable, the form of government may be revised pursuant to the process set forth in the G.L. c.43B or special legislation.

4. We are planning to post all information we have to the town's website. Can we post the information that you gave us regarding types of governments?

The information I forwarded is publicly available from the MMA or DHCD. Now that such information has been received by the Committee, in my opinion, it is a public record and may be posted.

5. Regarding residency requirements - we would like to make it more restrictive - how far can we go on that issue? Such as having to live in the town for six months and one day, as well as being a registered voter, prior to running for office, or having to be a resident in the town for one year prior to running for office.

In my opinion, a charter amendment proposed by special legislation may establish eligibility requirements for office, such as a durational residency requirement. As you know, in general, in order to run for election the only requirement is that the person be a registered voter in the Town. However, there are several state and federal offices to which a durational residency requirement is applicable. I have attached a list of such offices from the Secretary of State's booklet entitled, "Don't Just Stand There . . . Run." Of course, the decision as to whether to impose a durational residency requirement, and the length of that requirement, is a policy matter for the Town.

Please let me know if you have any further questions regarding these matters.

Very truly yours,

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<<mailto:lgoldberg@k-plaw.com>> This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and its attachments, if any, and destroy any hard copies you may have created and notify me immediately.

From: Mary Ann Silva [<mailto:masilva@wareham.ma.us>]
Sent: Friday, June 26, 2009 11:45 AM
To: Lauren F. Goldberg
Subject: Charter Review Committee Questions

Hi Lauren,

Here are the questions that the committee had at last night's meeting.

1. When and if we accept Plan B, can we make major changes to the initial plan or do we have to accept it

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as is, keep it in effect for a year and then make those changes?

2. In order to change Wareham's form of government, do we do it by elected Commission or by Special Act.

3. When we do change government to Mayor/council - how is the mayor's term setup. Can we make it a four-year term from the beginning or do we have to wait one cycle before we extend his term?

3. We are planning to post all information we have to the town's website. Can we post the information that you gave us regarding types of governments?

4. Regarding residency requirements - we would like to make it more restrictive - how far can we go on that issue? Such as having to live in the town for six months and one day, as well as being a registered voter, prior to running for office, or having to be a resident in the town for one year prior to running for office.

I am trying to form the questions as they were given to me last night. Anything you don't understand, just let me know. Thank you for your assistance.

Mary Ann Silva
Town Clerk