



Town of Reading Meeting Posting with Agenda

2018-07-16 LAG

Board - Committee - Commission - Council:

Charter Review Committee

Date: 2023-11-14

Time: 7:00 PM

Building: Reading Town Hall

Location: Select Board Meeting Room

Address: 16 Lowell Street

Agenda:

Purpose: General Business

Meeting Called By: Jacquelyn LaVerde on behalf of Chair Chris Haley

Notices and agendas are to be posted 48 hours in advance of the meetings excluding Saturdays, Sundays and Legal Holidays. Please keep in mind the Town Clerk's hours of operation and make necessary arrangements to be sure your posting is made in an adequate amount of time. A listing of topics that the chair reasonably anticipates will be discussed at the meeting must be on the agenda.

All Meeting Postings must be submitted in typed format; handwritten notices will not be accepted.

Topics of Discussion:

This meeting will be held in the Town Hall Conference Room and remotely via Zoom:

Join Zoom Meeting

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AGENDA:

1. Public Comment
2. Discussion on Content and Potential Changes to Charter Article 3 and Article 4
3. Approval of Minutes
4. Future Agenda Items

ARTICLE 3 ELECTED OFFICERS AND BOARDS OR COMMITTEES

3.1 General Provisions

The offices to be filled by the voters shall be the Board of Selectmen, School Committee, Board of Library Trustees, Municipal Light Board of Commissioners, Moderator and such members of regional authorities or districts as may be established by statute, intergovernmental agreement executed pursuant to Section 1.5 or otherwise.

Only a registered voter of the Town shall be eligible to hold any elective town office; provided, however, that no person holding any elective Town office shall simultaneously hold any other elective Town office except that of Town Meeting Member.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

Elected Town Officers shall serve without compensation unless otherwise specifically voted by Town Meeting.

Elected Town Officers shall be subject to the call of the Board of Selectmen at all reasonable times for consultation, conference and discussion on any matter relating to their respective offices.

3.2 Board of Selectmen

There shall be a Board of Selectmen consisting of five (5) members elected for three (3) year terms so arranged that as nearly an equal number of terms as possible shall expire each year.

The executive powers of the Town shall be vested in the Board of Selectmen. The Board of Selectmen shall have all of the powers and duties granted to Boards of Selectmen by the Constitution and General Laws of the Commonwealth of Massachusetts, and such additional powers and duties as may be provided by the Charter, by Town Bylaw, or by Town Meeting vote.

The Board of Selectmen shall cause the laws and orders for the government of the Town to be enforced and shall cause a record of all its official acts to be kept.

The Board of Selectmen shall appoint a Town Manager, a Town Counsel, a Town Accountant, not more than five (5) Constables, and any other appointed board or committee member for whom no other method of selection is provided by the Charter or by Town Bylaw.

The Board of Selectmen or its designee shall be the Licensing Board of the Town and shall have the power to issue licenses, to make all necessary rules and regulations regarding the issuance of such licenses, to attach such conditions and restrictions thereto as it deems to be in the public interest, and to enforce the laws relating to all businesses for which it issues licenses.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

3.3 School Committee

There shall be a School Committee consisting of six (6) members elected for three (3) year terms so arranged that two (2) terms shall expire each year.

The School Committee shall have all of the powers and duties granted to School Committees by the Constitution and General Laws of the Commonwealth of

Massachusetts and such additional powers and duties as provided by the Charter, by Town Bylaw or by Town Meeting vote.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

The School Committee shall make all reasonable rules and regulations, consistent with law, for the administration and management of the public schools of the Town. The School Committee shall appoint a Superintendent of Schools and shall define his duties and terms of employment.

3.4 Board of Library Trustees

There shall be a Board of Library Trustees consisting of six (6) members elected for three (3) year terms so arranged that two (2) terms shall expire each year.

The Board of Library Trustees shall have all of the powers and duties granted to Boards of Library Trustees by the Massachusetts General Laws, and such additional powers and duties as may be authorized by the Charter, by Town Bylaw or by Town Meeting vote.

The Board of Library Trustees shall have control over the selection of Library materials, and shall have custody and management of the Library and of all property of the Town related thereto; provided, however, that the Town Manager or his designee shall have responsibility for the maintenance of the Library building and grounds. The Board of Library Trustees shall appoint a Library Director and shall define his duties and terms of employment, subject to the personnel policies and classification and compensation plans established by the Board of Selectmen.

The Board of Library Trustees shall administer all money or property that the Town may receive on behalf of the Library by gift or bequest in accordance with the provisions of such gift or bequest.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

3.5 Municipal Light Board of Commissioners

There shall be a Municipal Light Board of Commissioners consisting of five (5) members elected for three (3) year terms so arranged that as near an equal number of terms as possible shall expire each year.

The Municipal Light Board of Commissioners shall have all the powers and duties granted to cities and towns in respect to municipal lighting plants by Massachusetts General Laws Chapter 164, Section 34 *et seq.* and other general and special acts pertaining thereto, together with such further powers and duties assigned to them by the Charter, by Town Bylaw, or by Town Meeting vote.

The Municipal Light Board of Commissioners shall hire the General Manager of the Municipal Light Department and set his duties and terms of employment.

The Municipal Light Board of Commissioners shall appoint the Accounting Manager or Chief Accountant of the Municipal Light Department and appoint Counsel to the Municipal Light Department.

The Accounting Manager or Chief Accountant, as the case may be, and Counsel shall be subject to the supervision of the General Manager.

The Municipal Light Board of Commissioners shall approve warrants for payments of all bills and payroll of the Municipal Light Department and shall approve all contracts which are at or above the competitive sealed bid procedures level as stated in Massachusetts

General Laws Chapter 30B, Section 5 and, further, all contracts shall be made in accordance with Massachusetts General Laws Chapter 30B. Contracts for purchasing of power shall not be subject to Massachusetts General Laws Chapter 30B but shall be approved by the Municipal Light Board of Commissioners.

The Municipal Light Board of Commissioners shall employ the Auditor appointed by the Town of Reading Audit Committee.

The Municipal Light Board of Commissioners shall annually set electric rates and approve an annual operating budget and Capital Improvements Program each fiscal year. Such approval will be done by a majority vote of the Municipal Light Board of Commissioners. After the Municipal Light Board of Commissioners has approved an annual operating budget and Capital Improvements Program, it will present them to the Town of Reading Finance Committee and Town of Reading Town Meeting. Upon request of any of the other towns served by the Municipal Light Department, the Municipal Light Board of Commissioners shall make a presentation to the Finance Committee and/or Town Meeting of any such town(s).

[Amended April 28, 2003 - Article 7]

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

3.6 Moderator

There shall be a Moderator elected for a one (1) year term.

The Moderator shall have all of the powers and duties granted to Moderators by the Constitution and General Laws of the Commonwealth of Massachusetts, and such additional powers and duties as provided by the Charter, by Town Bylaw or by Town Meeting vote. The Moderator shall not simultaneously serve as an elected Town Meeting Member or in any other elected Town office.

ARTICLE 4 APPOINTED BOARDS OR COMMITTEES

4.1 Board of Assessors

There shall be a Board of Assessors consisting of three (3) members appointed by the Board of Selectmen for three (3) year terms so arranged that one (1) term shall expire each year.

The Board of Assessors shall have all the powers and duties granted to Boards of Assessors by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

The elected members of the Board of Assessors serving at the time that this section first becomes effective may continue to serve in office until their elected terms expire, unless reappointed for an additional term or terms pursuant to this section.

[Amended November 30, 1989 - Article 36 and approved by vote of the Town on March 19, 1990]

4.2 Board of Cemetery Trustees

There shall be a Board of Cemetery Trustees consisting of six (6) members appointed by the Board of Selectmen for three (3) year terms so arranged that two (2) terms shall expire each year.

The Board of Cemetery Trustees shall have all the powers and duties granted to Boards of Cemetery Trustees by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

4.3 Board of Commissioners of Trust Funds

There shall be a Board of Commissioners of Trust Funds consisting of five (5) members. Three (3) shall be appointed by the Board of Selectmen for three (3) year terms so arranged that one (1) term shall expire each year. In addition, the Board of Selectmen shall appoint one of its members to serve as a full voting member *ex officio*, and the Town Treasurer shall serve as a full voting member *ex officio*.

The Board of Commissioners of Trust Funds shall have such powers and duties as are granted to them by the Board of Selectmen.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

4.4 Board of Health

There shall be a Board of Health consisting of three (3) members appointed by the Board of Selectmen for three (3) year terms so arranged that one (1) term shall expire each year.

The Board of Health shall have all of the powers and duties granted to Boards of Health by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

4.5 Community Planning and Development Commission

There shall be a Community Planning and Development Commission consisting of five (5) members appointed by the Board of Selectmen for three (3) year terms so arranged that as nearly an equal number of terms as possible shall expire each year.

The Community Planning and Development Commission shall have all of the powers and duties granted to Planning Boards, Boards of Survey and Industrial Development

Commissions by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote. The Community Planning and Development Commission shall have the power to regulate the subdivision of land within the Town by the adoption of Rules and Regulations pertaining thereto.

The Community Planning and Development Commission shall make studies and prepare plans concerning the resources, developmental potential and needs of the Town; and shall report annually to the Town giving information regarding the physical condition of the Town, and any plans or proposals known to it affecting the resources, physical development and needs of the Town.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]

4.6 Conservation Commission

There shall be a Conservation Commission consisting of seven (7) members appointed by the Board of Selectmen for three (3) year terms so arranged that as near an equal number of terms as possible shall expire each year.

The Conservation Commission shall have all the powers and duties granted to Conservation Commissions by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

4.7 Council on Aging

There shall be a Council on Aging consisting of ten (10) members appointed by the Board of Selectmen for three (3) year terms so arranged that as near an equal number of terms as possible shall expire each year.

The Council on Aging shall have all the powers and duties given to Councils on Aging by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

4.8 Historical Commission

There shall be a Historical Commission appointed by the Board of Selectmen, which shall determine the number of members and their term of appointment, not to exceed three (3) years

The Historical Commission shall have all the powers and duties granted to Historical Commissions by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

4.9 Housing Authority

There shall be a Housing Authority consisting of five (5) members. Four (4) members shall be appointed by the Board of Selectmen, and the fifth (5th) member shall be a resident of the Town, appointed by the Commonwealth of Massachusetts or as otherwise provided by law. Housing Authority Members shall serve for five (5) year terms so arranged that one (1) term shall expire each year.

The Housing Authority shall have all of the powers and duties granted to housing authorities by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

4.10 Recreation Committee

There shall be a Recreation Committee consisting of nine (9) members, eight (8) appointed by the Board of Selectmen, and one (1) appointed by the School Committee for three (3) year terms so arranged that three (3) terms shall expire each year.

The Recreation Committee shall have such powers and duties as are granted to them by the Board of Selectmen, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

The Recreation Committee shall be responsible for the evaluation of recreational program activities, formulation of overall plans for recreational program development, and for the scheduling of Town parks and recreational facilities when not in use by the School Department.

4.11 Town Forest Committee

There shall be a Town Forest Committee, appointed by the Board of Selectmen, which shall determine the number of members and their term of appointment, not to exceed three (3) years.

The Town Forest Committee shall have all the powers and duties given to Town Forest Committees by the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw, by the Board of Selectmen or by Town Meeting vote.

4.12 Zoning Board of Appeals

There shall be a Zoning Board of Appeals consisting of five (5) members and two (2) associate members appointed by the Board of Selectmen for three (3) year terms so arranged that as near an equal number of terms as possible shall expire each year.

The Zoning Board of Appeals shall have all the powers and duties of Zoning Boards of Appeal under the Massachusetts General Laws, and such additional powers and duties as may be provided by the Charter, by Town Bylaw or by Town Meeting vote.

[Amended November 17, 2005 - Article 22 and approved by vote of the Town on April 4, 2006]

4.13 Charter Review Committee

At least every ten (10) years, a special Committee consisting of nine (9) members shall be established for the purpose of reviewing the Charter and making a report, with recommendations, to the Town Meeting concerning any proposed amendments that said Committee may determine to be necessary or desirable. The Committee shall consist of the Moderator, one (1) member or designee of the Board of Selectmen, one (1) member or designee of the School Committee, one (1) member or designee of the Board of Library Trustees, one (1) member or designee, of the Municipal Light Board of Commissioners, one (1) member of the Bylaw Committee and three (3) Town Meeting members to be appointed by the Moderator.

4.14 Other Boards or Committees

Any of the elected boards or committees authorized by Article 3 may establish and appoint or dissolve boards or committees from time to time for a specific purpose. Members of such boards or committees shall reside in the Town of Reading at the time of their appointment and during their term of office.

The appointing authority of any such board or committee shall, in advance of the first meeting of said board or committee and annually thereafter, report the purpose, membership and contact information of said board or committee to the Town Clerk.

[Amended November 15, 2004 - Article 16 and approved by vote of the Town on April 5, 2005]
[Amended November 15, 2010 - Article 15 and approved by vote of the Town on April 6, 2010]

4.15 Associate Membership

All appointed boards or committees authorized by Article 4 may have associate members if specified in the Charter, Town Bylaw or Massachusetts General Laws. Associate members shall be appointed in the same manner as other members of the board or committee. All rules and regulations relating to associate membership on appointed boards or committees shall be set forth in the Bylaw or Charter provision defining the conduct of such bodies.

Associate members may not vote on any issue to be decided by the board or committee to which the individual is appointed as an associate member except as allowed by the Charter, Town Bylaw or the Massachusetts General Laws. Associates members of boards or committees serving as of the effective date of this Section 4.15 shall be allowed to serve until the end of their term or until June 30, 2015, whichever comes first.

LaVerde, Jacquelyn

From: Alan Foulds <alanfouldsmoderator@gmail.com>
Sent: Friday, November 10, 2023 1:14 PM
To: LaVerde, Jacquelyn
Cc: Maltez, Fidel
Subject: Alan Foulds Notes for the Charter Committee

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Jackie,

I will probably not be able to make it to the Charter Committee meeting on Tuesday (outside chance I'll make it via Zoom).

I have a few notes that I would like the committee to consider, but I don't want to violate the Open Meeting Law.

Can these be sent to the Chair (Chris Haley)?

NOTES:

General (probably found by others, as well)

I found 26 instances of the words Board(s) of Selectmen.

I found 3 instances of the word : "he".

My Opinion

Article 3.6 Moderator

Many towns have switched to a three-year term. I personally **oppose** that and believe it should remain as a one-year term. The Moderator is the only elected position that is filled by only one person. All other elected positions are part of multiple-member boards or committees. If there is a problem with a person in any of the other positions it is lessened by the fact that there are other members. If a problem arises with a Moderator, all of Town Meeting can be affected. A one-year term tends to limit any damage.

Things to be Removed

Article 4.1 Board of Assessors

The last paragraph, concerning the transition from an elected to an appointed board is no longer necessary and can be removed. It begins with the words "The elected members ..."

Article 4.15 Associate Members

The last line of the second paragraph is no longer necessary. It begins "Associate members of boards or committees serving as of ..."

Respectfully submitted
Alan Foulds

Memo

Date –November 13, 2023

To: Town of Reading Charter Review Committee

From- Philip B Pacino, Charter Review Committee member

Re: Article 3, Section 5

The enclosed pages are to amend Article 3 Section 5 to bring Article 3 in line with State Law Chapter 164

Enclosed are following:

1. August 17, 2023 Proposed Charter Revision that explains the change and proposes wording to affect the changes.
2. A clean copy of the Section 3.5 after all the [proposed changes
3. Copy of MA State Law Chapter 64 Section 56
4. May 31, 2013 legal memorandum form Rubin & Rudman relating to Board Authority/Town Charter.

These proposed changes to the Reading Town Charter are to align the Charter to the State Law Chapter 164. The Reading Municipal Light department is required to follow State Law.

I will be available to discuss these proposed changes at our meeting on Tuesday November 14, 2023

Thank you in advance for your consideration of this matter.

TOWN OF READING CHARTER REVIEW 2023

RMLD PROPOSED CHARTER REVISIONS

August 17, 2023

DRAFT

In accordance with Reading's Town Charter review, please find RMLD's proposed revisions outlined within this document.

ARTICLE 3: ELECTED OFFICERS AND BOARD OR COMMITTEES **ARTICLE 3: SECTION 5: MUNICIPAL LIGHT BOARD OF COMMISSIONERS**

General

- RMLD is proposing modifications to Article 3 Section 5 to ensure consistency and compliance with G.L c. 164, which governs the management and operation of municipal light plants, such as RMLD.
- Under G.L c. 164 § 56 the Manager of a municipal light plant has full charge of the operation and management of the plant.
- Specifically, under G.L c. 164, § 56 the General Manager exclusively has hiring authority.
- See Rubin and Rudman legal opinions dated May 31, 2013.

Paragraph 3

- Minor verbiage changes for clarity, and to make broader.
- Proposed revision: The Municipal Light Board of Commissioners shall hire the General Manager of the Municipal Light Department and set the ~~his duties and~~ terms of employment.

Paragraph 4 & 5

- Remove both paragraphs for clarity and consistency.
- Counter to G.L c. 164 § 56, Paragraph 4 takes statutory powers away from the General Manager.
- See Rubin and Rudman legal opinions dated May 31, 2013.
- Proposed revision: (4) ~~The Municipal Light Board of Commissioners shall appoint the Accounting Manager or Chief Accountant of the Municipal Light Department and appoint Counsel to the Municipal Light Department.~~
- Proposed revision: (5) ~~The Accounting Manager or Chief Accountant, as the case may be, and Counsel shall be subject to the supervision of the General Manager.~~

Paragraph 6

- Remove 30B from Town Home Rule. 30B remains within RMLD, pending further discussion with Commissioners and RMLD staff.
- Proposed revision: The Municipal Light Board of Commissioners shall approve warrants for payments of all bills and payroll of the Municipal Light Department ~~and shall approve all contracts which are at or above the competitive sealed bid procedures level as stated in Massachusetts Town of Reading Home Rule Charter Article 3—Elected Officers and Boards or Committees Page | 17 Reading Home Rule Charter—April 2015 General Laws Chapter 30B, Section 5 and, further, all contracts shall be made in accordance with Massachusetts General Laws Chapter 30B. Contracts for purchasing of power shall not be subject to Massachusetts General Laws Chapter 30B but shall be approved by the Municipal Light Board of Commissioners.~~

Paragraph 7

- Paragraph 7 is inconsistent with RMLD's autonomous management authority, and the General Manager's authority to hire RMLD employees.
- Proposed revision: ~~The Municipal Light Board of Commissioners shall employ the Auditor appointed by the Town of Reading Audit Committee.~~
- See Rubin and Rudman legal opinions dated May 31, 2013.

Paragraph 8

- Minor modifications for clarity and consistency.
- Change "set" to "approve"
- Change "capital improvements program" to "capital budget."
- Change "fiscal" to "calendar."
- Modified verbiage to reflect that either the Board of Commissioners or General Manager can make a presentation upon request.
- Proposed revision: The Municipal Light Board of Commissioners shall annually ~~set~~ **approve** electric rates and approve an annual operating budget and ~~Capital Improvements Program~~ **capital budget** each ~~calendar year~~ **fiscal year**. Such approval will be done by a majority vote of the Municipal Light Board of Commissioners. After the Municipal Light Board of Commissioners has approved an annual operating budget and ~~Capital Improvements Program~~ **capital budget**, ~~upon request of any of the other towns~~ **four towns served by the Municipal Light Department**, ~~it will present them to the Town of Reading Finance Committee and Town of Reading Town Meeting.~~ the Municipal Light Board of Commissioners or **General Manager** shall make a presentation to the Finance Committee and/or Town Meeting of any such town(s).

Reading Town Charter – RMLD Proposed Revisions

3.5 Municipal Light Board of Commissioners

There shall be a Municipal Light Board of Commissioners consisting of five (5) members elected for three (3) year terms so arranged that as near an equal number of terms as possible shall expire each year.

The Municipal Light Board of Commissioners shall have all the powers and duties granted to cities and towns in respect to municipal lighting plants by Massachusetts General Laws Chapter 164, Section 34 et seq. and other general and special acts pertaining thereto, together with such further powers and duties assigned to them by the Charter, by Town Bylaw, or by Town Meeting vote.

The Municipal Light Board of Commissioners shall approve warrants for payments of all bills and payroll of the Municipal Light Department.

The Municipal Light Board of Commissioners shall annually approve electric rates and approve an annual operating budget and capital budget each calendar year. Such approval will be done by a majority vote of the Municipal Light Board of Commissioners. After the Municipal Light Board of Commissioners has approved an annual operating budget and capital budget, upon request of any of the four towns served by the Municipal Light Department, the Municipal Light Board of Commissioners or General Manager shall make a presentation to the Finance Committee and/or Town Meeting of any such town(s).

Part I

ADMINISTRATION OF THE GOVERNMENT

Title XXII

CORPORATIONS

Chapter 164

MANUFACTURE AND SALE OF GAS AND ELECTRICITY

Section 56

MANAGEMENT OF PLANT

Section 56. The mayor of a city, or the selectmen or municipal light board, if any, of a town acquiring a gas or electric plant shall appoint a manager of municipal lighting who shall, under the direction and control of the mayor, selectmen or municipal light board, if any, and subject to this chapter, have full charge of the operation and management of the plant, the manufacture and distribution of gas or electricity, the purchase of supplies, the employment of attorneys and of agents and servants, the method, time, price, quantity and quality of the supply, the collection of bills, and the keeping of accounts. His compensation and term of office shall be fixed in cities by the city council and in towns by the selectmen or municipal light board, if any; and, before entering upon the performance of his official duties, he shall give bond to the city or town for the faithful performance thereof in a sum and form and with sureties to the satisfaction of the mayor, selectmen or municipal light board, if any, and shall, at the end of each municipal year, render to them such detailed statement of his doings and of the business and financial matters

in his charge as the department may prescribe. All moneys payable to or received by the city, town, manager or municipal light board in connection with the operation of the plant, for the sale of gas or electricity or otherwise, shall be paid to the city or town treasurer. All accounts rendered to or kept in the gas or electric plant of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against such plant to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or payrolls of such plants before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive, of chapter forty-one. The manager shall at any time, when required by the mayor, selectmen, municipal light board, if any, or department, make a statement to such officers of his doings, business, receipts, disbursements, balances, and of the indebtedness of the town in his department.

PRIVILEGED/CONFIDENTIAL/ATTORNEY WORK PRODUCT



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MEMORANDUM

To: Reading Municipal Light Department
Board of Commissioners

From: Diedre T. Lawrence

Re: Board Authority/Town Charter

Date: May 31, 2013

In the course of reviewing and editing the employment agreement for the incoming General Manager, we noticed provisions referencing the applicability of the Reading Town Charter to the office of General Manager (and the Reading Municipal Light Department Board or "RMLB"). We wanted to take this opportunity to advise you of the issues raised by Section 3.5 of the Charter regarding RMLD, its General Manager, and the RMLB. We believe these issues are important, and that given the recent change in the composition of the RMLB, you may not be aware of them. We are not charging you for the work associated with this memorandum. You may wish to discuss these issues further. If you require follow-up on any of the points set forth here, please do not hesitate to contact us, or have the General Manager contact us on your behalf.

Home Rule Powers and Chapter 164

- While the Town of Reading has broad powers of self-governance, municipal charters duly adopted or amended in accordance with G.L. c. 43B only have the effect of law so long as they present no conflict with laws enacted by the Legislature. *Kowalczyk v. Town of Blackstone*, 48 Mass.App.Ct. 58, 59 (1999); *City Council of Boston v. Mayor of Boston*, 383 Mass. 716, 719 (1981). Thus, a charter provision applies only insofar as it does not conflict with G.L. c. 164.
- G.L. c. 164 provides for a comprehensive legislative scheme governing the powers of RMLD, including the General Manager and RMLB, without interference from the Town.
- In *Del Duca v. Town Administrator of Methuen*, 368 Mass. 1 (1975), the Supreme Judicial Court struck down an ordinance adopted pursuant to Methuen's charter

purporting to alter the powers and duties of the local planning board in contravention of the General Laws. There, the Court reviewed the various sections of G.L. c. 41 which comprehensively treated the creation and operation of planning boards, and determined that the Legislature had taken the entire subject of the establishment, powers and duties of local planning boards in hand. Having done so, the Court concluded that the Legislature precluded local legislation that would impair the operation and effect of the statutes in that field. *Del Duca, supra* at 12-13. As a result, the Court determined that Methuen was “powerless to specify the planning board’s powers and duties in a manner which deviated in any respect from the powers and duties established by the legislation on the subject.” *Id.*

- The Court also struck down municipal home rule legislation in *City Council of Boston v. Mayor of Boston*, 383 Mass. 716 (1981). In that case, the offending legislation purported to limit the number of employees in the mayor’s office and to fix their maximum salaries. The Court determined that such local legislation was an invalid and unenforceable encroachment on the mayor’s power under the Boston charter and special legislation pertaining to the mayor’s administrative authority. Under the Boston charter and relevant statutes, the mayor was charged with the administrative duties of the city government, including the supervision of subordinate officers, powers of appointment and termination, and the implicit power to set compensation levels for his staff. Therefore, the Court found that the charter and special acts evinced a legislative intent to reserve to the mayor the discretion to determine the size and salary level of his own staff, and that an ordinance purporting to regulate the same was necessarily inconsistent and, therefore, invalid. *City Council of Boston, supra* at 721.
- After the Court issued these decisions, the Legislature enacted G.L. c. 43B, § 20 to address the consistency of charters with existing General Laws. Section 20 provides in pertinent part that,

The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter [43B] shall be deemed consistent with the provisions of any law 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.

G.L. c. 43B, §20.

- Municipal light plants, such as RMLD, are subject to a comprehensive statewide scheme of legislation regarding their powers found at Chapter 164. Notably, the Appeals Court’s decision in *Golubek v. Westfield Gas & Elec. Light Bd.*, 32 Mass. App. Ct. 954 (1992), which was issued **after** the enactment of G.L. c. 43B, §20, that local legislation generally cannot alter the comprehensive statutory scheme pertaining to municipal light plants. *Golubek* delineates the respective powers of the Manager and Light Board, finding that the **“charter provision cannot alter the statutory power of the manager to hire employees and attorneys.”** *Id.* at 956 (emphasis added).

Problems with Reading Town Charter

- Section 3.5 of the Town Charter takes statutory powers away from the General Manager and gives them to the RMLB. It gives the RMLB hiring authority over the following positions:
 - Accounting Manager or Chief Accountant of the Reading Municipal Light Department; and
 - counsel to the Reading Municipal Light Department.

This transfer of authority to the RMLB is expressly prohibited by *Golubek*. Under G.L. c. 164, § 56, the General Manager makes these hiring decisions.

- The Town Charter requires the RMLB to employ the Auditor appointed by the Town of Reading Audit Committee. Again, this is inconsistent with RMLD's autonomous management authority and the General Manager's authority to hire RMLD employees. The Town cannot dictate who RMLD can use.
- The Town Charter requires that all RMLD contracts shall be made in accordance with G.L. c. 30B, except for power purchases, but such purchases must be approved by the RMLB. This provision impermissibly takes away the authority of the RMLB to establish purchasing policy. Under G.L. c. 30B, the RMLB decides whether to accept Chapter 30B (which is consistent with its authority under G.L. c. 164). Chapter 30B can only be imposed on the RMLB by a vote taken by the RMLB. If such a vote has been taken, then the statute would apply. If it has not, then it does not apply. G.L. c. 30B, § 1(14) (explicitly exempted the application of Chapter 30B to light plants unless adopted by vote of the Board.)
- The Charter provides that RMLB shall annually set electric rates and approve an annual operating budget and Capital Improvements Program each fiscal year. Such approval will be done by a majority vote of the RMLB. After the RMLB has approved an annual operating budget and Capital Improvements Program, the Charter requires it to present them to the Reading Finance Committee and Reading Town Meeting. Upon request of any of the other towns served by the Reading Municipal Light Department, the Municipal Light Board shall make a presentation to the Finance Committee and/or Town Meeting of any such town(s).

The RMLB's approval over rates is part of its policymaking authority (for example, terms and conditions of service, and tariffs must be approved by the RMLB and filed with the DPU) and addressed in G.L. c. 164, § . MLP Boards also approve budgets, as per *Peabody*, 268, 270 (appropriations for the "expense of the plant" may be made by vote of municipal light commission on a budget submitted by the manager). However, the Town Charter provision requiring the RMLB to approve a capital improvement program arguably is inconsistent with RMLD's independent authority to decide what types of programs or policies are necessary for the efficient operation of the plant.

Neither the Finance Committee nor Town Meeting has authority to approve RMLD's budget. *See Peabody, 348 Mass. at 273* (budget of municipal light department should be determined in accordance with G.L. c. 164 and not by procedures of statute governing control of municipal departments, such as those procedures found in G.L. c. 44).

- The Town Charter purports permit the RMLB to assume any additional duties as designated bylaw or by other Town Meeting vote. The Town cannot exercise authority which is inconsistent with G.L. c. 164. For instance, the Town cannot take other powers away from the General Manager and give them to the RMLB. The Town also cannot impose additional duties on RMLB which have the effect of taking control away from RMLB over the operation of the plant. However, to the extent that the Town wants to allow the RMLB to serve in a dual capacity, such as a board of the water department, such action would be permitted under G.L. c. 43B, § 20 (relating to the structure of 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) so long as the RMLB acts in accordance with G.L. c. 164 and any other applicable law.

Charter Review Committee Draft Minutes

October 30, 2023

Conference Room – 7 PM

Haley noted Town Counsel sent in some comments that he will elaborate on when they get to each section.

The board started editing section 1 with Town Clerk Laura Gemme tracking changes on the Charter document as they go along.

A change throughout the document will be to replace Board of Selectmen with Select Board. They will also make all terms gender neutral throughout the document.

Jonathan Barnes made a comment about the 'majority vote' term; in Section 4, specifically in regards to the Historical Commission, he would like them to put a specific number of members instead of the current wording.

The committee started editing Article 2. The board discussed the mention of 8 precincts in Article 2.1. The Town is close to needing 9 precincts. Gemme noted the State says if you need to adjust to add a new precinct in the future, it doesn't matter what your Charter says. Haley noted he will check with Town Counsel to see if they should pursue this or not.

In Article 2.4, the group discussed the words 'may' vs. 'shall' and which should be used.

Haley will ask Town Counsel for their opinion on 'local news medium' under the vacancies section of 2.6.

Minutes

The board discussed the previous meeting minutes.

Motion to approve the meeting minutes as written, second by Arnold. The motion passed with a unanimous roll call vote.

Future Agendas

The next meeting will be November 14th.

Motion to adjourn at 9:18 PM, second by Arnold. The motion passed with a unanimous roll call vote.