

Balmer, Nan

Subject:

FW: Draft TA special for discussion with the Board Monday night

4

Attachments:

Proposed Wayland Town Administrator Act.DRAFT.12.07.17.docx

December 7, 2017

Chair Anderson and Members of the Board,

Please find attached a draft of a potential new town administrator special act that would implement many of the recommendations we made in our report. We have flagged about a dozen "decision points" for the Board to consider. However, it should be noted that every section, phrase, and word is actually a decision point, because all of the text could be revised at the Board's discretion. What we have provided here is simply a starting point for discussions. We put this together based on our report and what we know of the town. We encourage Board members to review it and to bring questions about it and proposed changes. We suspect (and hope) that Board members will have lots of ideas for how to align this better with Wayland's needs, and we look forward to a good discussion about it. Please let us know if you have any questions.

Regards,

Michael Ward and Frederick Kingsley

Michael Ward

Director of Municipal Services

Edward J. Collins, Jr. Center for Public Management

John W. McCormack Graduate School of Policy and Global Studies

University of Massachusetts Boston

* DRAFT "FINANCIAL MANAGEMENT STRUCTURE"
REPORT, DATED 10/5/17 IS IN DROPBOX AND
ON WEBSITE WITH PACKET FOR REFERENCE

DRAFT – AN ACT RELATIVE TO THE POSITION OF TOWN ADMINISTRATOR IN THE TOWN OF WAYLAND – DRAFT

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Comment [mjw1]: Decision point 1: Should the position be called "town administrator" or "town manager"? There are no material differences. The set of authorities and responsibilities can be determined independently from the title. Also, note that the title of this act could be changed to reflect the fact that it addresses a wide range of topics related to the town administrator. The title in here currently is the same as the current TA act.

Be it enacted, etc., as follows:

SECTION 1. DESIGNATION OF ELECTED OFFICIALS

(a) Upon the effective date of this act, the registered voters of the town of Wayland shall, in accordance with any applicable laws, bylaws, votes of the town or inter-local agreement continue to elect the following:

- (i) members of the board of selectmen;
- (ii) town moderator;
- (iii) town clerk;
- (iv) school committee members;
- (v) assessors;
- (vi) planning board members;
- (vii) board of health members;
- (viii) commissioners of trust funds;
- (ix) library trustees;
- (x) members of the board of public works;
- (xi) recreation commissioners; and
- (xii) housing authority members.

Comment [mjw2]: Decision point 2: Through this special act, the town may convert any of these offices from elected to appointed, with the exception of the board of selectmen, moderator, and school committee. The people in these positions can be grandfathered in if the town wishes. Please see report for further comment on the elected status of these boards, committees, and positions.

(b) The powers, duties and responsibilities of elected and appointed officials shall be as provided by applicable General Laws, special acts, bylaws, and votes of the town, except as otherwise expressly provided herein.

(c) Notwithstanding the election by the voters of the town of the officers named in this section, such officers shall be available at reasonable times to the board of selectmen or town administrator for consultation, conference, and discussion on matters relating to their respective offices.

SECTION 2. POWERS AND DUTIES OF THE BOARD OF SELECTMEN

Comment [mjw3]: Decision point 3: Some towns have been retitling their "board of selectmen" to "selectboard," to make them gender neutral. This is an option through this act.

(a) The executive powers of the town shall be vested in the board of selectmen, who shall have all the powers given to boards of selectmen in the General Laws.

(b) The board of selectmen shall consist of 5 persons elected by the voters of the town. The term of each member of the board of selectmen shall be 3 years. The board of selectmen shall annually elect a chairperson from among its members.

(c) The board of selectmen shall serve as the chief goal-setting and policy-making body of the town. The board of selectmen shall set guidelines and policy directives that are to be implemented by the town administrator and by other officers and employees appointed by or under its authority. The board of selectmen shall have the power to enact rules and regulations to implement policies and to issue interpretations of the rules and regulations.

(d) The board of selectmen shall exercise, through the town administrator, general supervision over all matters affecting the interests or welfare of the town. The board of selectmen shall not normally administer the day-to-day affairs of the town.

(e) The board of selectmen shall appoint the town administrator, town counsel, independent auditor,

assistant or special counsels, and all members of committees, boards, and commissions, except those positions that are elected by the voters or as otherwise expressly provided herein. The board of selectmen may make appointments to all positions and committees the board of selectmen creates for special or general purposes.

(f) The board of selectmen shall have oversight of such boards, committees, positions, or commissions appointed by the board of selectmen.

(g) The board of selectmen shall have the responsibility and authority for licenses and other non-personnel related functions as provided by the General Laws and the bylaws of the town.

(h) The board of selectmen shall be responsible for and shall approve the form and content of all town meeting warrants before such warrants are issued.

(i) The board of selectmen shall be responsible for establishing and maintaining written procedures for the preparation of the budget. The selectmen shall annually issue 1 or more written budget messages, including fiscal guidelines and the timeline, at the beginning of each budget cycle or at a time established by the town bylaws.

(j) The board of selectmen shall review the annual proposed budget prepared by the town administrator and make revisions the board of selectmen deems advisable. The town administrator shall present the budget as approved by the board of selectmen to the finance committee. The finance committee shall consider the budget proposed, shall establish the amounts which should, in its opinion, be appropriated for the ensuing fiscal year, shall add thereto such explanations and suggestions as it deems expedient, and shall report to the town meeting, in print or otherwise, such recommendations as it deems best for the interests of the town.

Comment [mjw4]: Decision point 4: Other than the town administrator, what other positions should the board of selectmen appoint?

Comment [mjw5]: Decision point 5: Which boards, committees, commissions, etc. should the board appoint? (And which should the town administrator or moderator appoint? Should the finance committee appointment be moved, as discussed the report?)

SECTION 3. APPOINTMENT OF THE TOWN ADMINISTRATOR

(a) The board of selectmen shall appoint, by an affirmative vote of at least 3 members, a town administrator who shall be the chief administrative officer of the town. The board of selectmen shall appoint the town administrator solely on that person's executive and administrative qualifications. The town administrator shall be a professionally qualified person of proven ability, especially fitted by education, training, and previous experience to perform the duties of the office. The town may from time to time, by by-law, establish such additional qualifications as seem necessary and appropriate.

(b) The town administrator shall devote full time to the duties of the office and shall not engage in any other business or occupation during the term of his employment by the town, unless such action is approved in advance, in writing, by the board of selectmen. The town administrator shall hold no elective office in the town during his tenure as town administrator, but the board of selectmen may appoint the town administrator to any non-elective office or position consistent with the responsibilities of the town administrator.

(c) The board of selectmen may enter into a formal contract with the town administrator and may set contract terms that shall have precedence over any town personnel bylaws. The board of selectmen shall set the compensation for the town administrator, not to exceed an amount appropriated by the town meeting.

(d) No member or former member of the board of selectman shall be eligible to be appointed to the position of the town administrator within 15 months of termination of such member's service.

(e) Before entering upon the duties of the office, the town administrator shall be sworn, in the presence of a majority of the members of the board of selectmen, to the faithful and impartial performance thereof by the town clerk or a notary public.

(f) The town administrator shall execute a bond in favor of the town for the faithful performance of the town administrator's duties in such sums and with such sureties as may be fixed and approved by the

Comment [mjw6]: Decision point 6: This could be majority or super-majority.

board of selectmen, the cost for which will be borne by the town.

(g) The board of selectmen shall provide for an annual review of the job performance of the town administrator.

SECTION 4. REMOVAL OF TOWN ADMINISTRATOR

(a) The board of selectmen, by a majority vote of its full membership, may remove the town administrator. At least 30 days before such removal shall be effective, the board of selectmen shall file a preliminary written resolution with the town clerk setting forth reasons, if any, for the proposed removal, a copy of which shall be delivered to the town administrator.

Comment [mjw7]: Decision point 7: This could be majority or super-majority.

(b) The town administrator may reply in writing to the resolution and may request, in writing, a public hearing; provided, however, that the request for a hearing shall be received by the town clerk not later than 10 days after the town administrator's receipt of the resolution. If the town administrator so requests, the board of selectmen shall hold a public hearing not earlier than 10 days nor later than 20 days after the filing of such request.

(c) Following the public hearing or, if none, at the expiration of 30 days following the filing of the preliminary resolution, the board of selectmen may adopt a final resolution of removal.

(d) As part of the preliminary resolution, the board of selectmen may suspend the town administrator from duty.

(e) Nothing contained herein shall limit the authority of the board of selectmen to suspend or remove the town administrator as provided by the laws of the commonwealth.

(f) The board of selectmen shall determine if such suspension shall be with or without pay.

SECTION 5. ABSENCE OR VACANCY OF TOWN ADMINISTRATOR

(a) During a temporary absence, not to exceed 30 days, the town administrator shall designate by a letter filed with the chair of the board of selectmen, a temporary town administrator to perform the duties of the office. Such delegation shall be limited to those matters not allowing for delay during the town administrator's absence.

(b) If, in the sole opinion of the board of selectmen, the town administrator's designee is unable to effectively perform the duties of the office during the temporary absence of the town administrator, the board of selectmen shall appoint a person to perform the duties of the office; provided, however, that those duties shall be limited to those matters not allowing for delay during the town administrator's absence.

(c) During an absence of the town administrator for 30 or more days, due to disability, illness, or other similar circumstance, the board of selectmen shall appoint an acting town administrator for the duration of the extended absence. Such designation will cease upon the return of the town administrator.

(d) If the individual serving as acting town administrator is a town officer or employee, the individual shall return to the position held prior to being appointed as the acting town administrator.

(e) No member of the board of selectmen shall serve as acting town administrator.

(f) If the board of selectmen determines, by majority vote of the full membership, that the town administrator will be unable to resume the duties of the job for any reasons, including, but not limited to, resignation, termination, or illness, the office of town administrator shall be filled as soon as practical by the board of selectmen, provided that the board of selectmen may appoint an acting town administrator to serve until a town administrator is appointed. The duties of an acting town administrator shall be limited to those matters not allowing for delay.

SECTION 6A. ADMINISTRATIVE RESPONSIBILITIES AND POWERS OF THE TOWN ADMINISTRATOR

Comment [mjw8]: Decision point 8: Are there items on this list that do not sound like they are appropriate for Wayland?

- (a) The town administrator shall be the chief administrative officer of the town and shall be responsible to the board of selectmen for the effective management of all town affairs placed in the town administrator's charge by this act, by the board of selectmen, by bylaws, or by vote of the town meeting, and for the implementation of town policies placed in the town administrator's charge by the board of selectmen.
- (b) The town administrator shall supervise all town departments, with the exception of the school department, and shall direct day-to-day affairs of the town.
- (c) The town administrator shall be responsible for assuring that the budget is administered as adopted by town meeting and in accordance with the General Laws, this act, and the town bylaws.
- (d) The town administrator shall advise the board of selectmen of all matters requiring action by the board of selectmen or by the town.
- (e) The town administrator shall, in consultation with the personnel board, oversee the town's personnel system and staff in accordance with the town bylaws, and shall oversee personnel evaluation policies and practices, enforcement of labor contracts, labor relations, collective bargaining, and all applicable state and federal regulations relating to employment. The town administrator may appoint a human resources director to assist with these human resources duties.
- (f) The town administrator shall attend all meetings of the board of selectmen, except when excused, and shall have the right to speak but not vote. The town administrator shall attend all annual and special town meetings and shall be permitted to speak when recognized by the moderator.
- (g) The town administrator shall administer, either directly or through a person appointed by the town administrator in accordance with this act, the General Laws and special acts applicable to the town, all town bylaws, and all rules and regulations established by the board of selectmen.
- (h) The town administrator shall have access to all information necessary for the proper performance of the duties of town administrator in accordance with the town bylaws, except for attorney-client privileged information that is provided to or by the board of selectmen, unless the board of selectmen specifically authorizes such access.
- (i) The town administrator may, without notice, cause the affairs of any division or department, except the school department, or the conduct of any officer or employee thereof, to be examined.
- (j) The town administrator shall keep the board of selectmen fully informed regarding all departmental operations, fiscal affairs, town priorities and concerns, and administrative actions, and shall submit periodic reports summarizing such matters to the board of selectmen.
- (k) The town administrator shall coordinate the activities among boards, commissions, and committees concerned with long-range municipal planning, including physical or economic development and environmental or resource protection of the town.
- (l) The town administrator shall be responsible for the maintenance all town buildings, property, and facilities, except those under the jurisdiction of the school department, unless requested by the school committee. The town administrator shall develop, keep, and annually update a full and complete inventory of all property of the town, both real and personal.
- (m) Under subsection (h) of section 2, the town administrator shall be responsible for the preparation of all town meeting warrants in accordance with the town bylaws and distribute, or cause to be distributed, copies of town meeting warrants to the residences of all registered voters of the town.
- (n) Upon request, and with the approval of the board of selectmen, the town administrator shall prosecute, defend, or compromise all litigation to which the town is party.
- (o) The town administrator shall keep full and complete records of town administrator's office and

annually submit to the board of selectmen a full written report of the operations of the office.

(p) The town administrator shall devote full time to the duties of said office and shall not engage in any other business or occupation during the term of employment by the town, except with the written consent of the board of selectmen. The town administrator shall hold no elective office in the town during the term of employment as town administrator, but the board of selectmen may appoint the town administrator to any non-elective office or position consistent with the responsibilities of the town administrator.

SECTION 6B. FINANCIAL RESPONSIBILITIES AND POWERS OF THE TOWN ADMINISTRATOR

(a) The town administrator shall be the chief financial officer of the town.

(b) The town administrator may, at the town administrator's discretion and with the approval of the board of selectmen, establish a consolidated department of finance responsible for the coordination and overall supervision of all fiscal and financial affairs of all agencies of town government and may appoint a director of finance; provided, however, that the terms of persons holding the position of accountant, treasurer/collector, and director of assessing on the effective date of this act shall not be reduced by reason of the consolidation.

(c) The town administrator shall be responsible for controlling all appropriated budget expenditures, which includes the power to approve or reject all warrants, including payroll, for the payment of town funds prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws.

(d) The town administrator shall be responsible for the preparation of the proposed operating budget to be included in the annual town meeting warrant. The proposed budget shall be prepared in accordance with the most current budget process by the date set pursuant to subsection (i) of section 2 as approved by the board of selectmen.

(e) The town administrator shall submit to the board of selectmen, by the date established pursuant to subsection (i) of section 2, a written proposed budget for the ensuing fiscal year.

(1) The proposed budget shall describe all actual or estimated revenue from all sources, and all actual or proposed expenditures, including debt service, for the previous, current, and ensuing fiscal years.

(2) The proposed budget shall detail all estimated expenditures for current operations during the ensuing fiscal year, detailed by agency, department, committee, purpose, and position.

(3) In addition, the town administrator shall prepare a written proposed capital improvements budget for the ensuing fiscal year and a 5-year forecast, and include both as part of the proposed annual budget.

(4) For the purpose of preparing the budget for the ensuing fiscal year, the town administrator shall include an estimate of revenues to be collected and free cash available at the close of the current fiscal year, including estimated balances in special accounts.

(5) The town administrator shall report on the estimated funds required to be levied and raised by taxation to defray all expenses and liabilities of the proposed budget together with an estimate of the tax rate necessary to raise such amount and include the information in the proposed budget.

(f) The town administrator shall submit a preliminary budget and capital plan to the board of selectmen and the finance committee pursuant to the budget process set forth in subsection (i) of section 2. The preliminary budget and capital plan shall be submitted not later than 70 days prior to the date of the annual town meeting.

(g) To assist the town administrator in preparing the proposed annual budget of revenue and

expenditures, all boards, officers, and committees of the town, including the school committee, shall furnish all relevant information in their possession and submit to the town administrator, in writing, in such form as the town administrator shall establish, a detailed estimate of the appropriations required and available funds.

(h) The town administrator shall keep the board of selectmen informed regarding the availability of federal and state funds and how such funds might relate to the town's current and long-range needs.

(i) The town administrator shall be responsible for filing all grant applications.

(j) After the close of each fiscal year and after the certification of free cash by the department of revenue, the town administrator, as soon as practicable, shall cause to have prepared audited financial statements. Upon completion of the audit, the town administrator shall promptly distribute the statements to the board of selectmen and the finance committee.

SECTION 6C. APPOINTMENT RESPONSIBILITIES AND POWERS OF THE TOWN ADMINISTRATOR

(a) The town administrator shall appoint, based upon merit and qualifications alone, and may remove, all department heads, officers, subordinates, and employees for whom no other method of selection is provided in the charter, except employees of the school department and employees identified in subsection (c) of this section.

Comment [mjw9]: Decision point 9: Are there any that should be specifically referenced here? Are there any exceptions to this?

(b) Appointments proposed by the town administrator, except as noted in subsection (e) of this section, shall become effective on the 15th day following the day on which notice of the proposed appointment is filed at a board of selectmen meeting, unless the board of selectmen shall, within such period and by a majority vote, vote to reject such proposed appointment, or has sooner voted to affirm it.

Comment [mjw10]: Decision point 10: Are there any exceptions to this? Should it apply to department heads only, or all staff?

(c) The town administrator shall appoint, based upon merit and qualifications:

- i. a director of assessing, with the consent of the board of assessors;
- ii. a town planner, with the consent of the planning board;
- iii. a director of public health, with the consent of the board of health;
- iv. a library director and all other library employees, with the consent of the board of library trustees.
- v. a recreation director, with the consent of the recreation commission; and
- vi. a director of public works, with the consent of the board of public works.

Comment [mjw11]: Decision point 11: The hiring process could also be set up the other way around. Instead of the board bringing a candidate to the town administrator, the town administrator could bring a proposed candidate to the board for approval. Either way could work, as long as both have a role, and the town administrator is the actual appointing authority.

For the purposes of this section, consent shall mean that each multiple-member body cited herein shall interview job candidates and make appointment recommendations to the town administrator. The town administrator shall not make an appointment under this section without the consent of the multiple-member body cited herein. In the case of employees appointed under this section, the town administrator shall inform the chair of the appropriate multiple-member body prior to the commencement of any disciplinary action or termination process, except in cases of an emergency, and provide an opportunity to the chair to confidentially comment on the proposed action directly to the town administrator.

(d) Relative to appointments made by the town administrator under subsection (c) of section 5-5, the policies established by each multiple-member body derived directly from statutory authority shall be the non-administrative policy adhered to by the town administrator and the town administrator's staff.

(e) Appointments made by the town administrator under subsection (c) of this section shall be effective immediately and shall not be subject to rejection by vote of the board of selectmen.

SECTION 6D. COLLECTIVE BARGAINING RESPONSIBILITIES AND POWERS OF THE TOWN ADMINISTRATOR

(a) The town administrator shall negotiate collective bargaining contracts on behalf of the board of selectmen; provided, however, that such contracts shall be subject to approval, ratification, and execution by the board of selectmen.

(b) The board of selectmen may authorize use of additional counsel or persons to assist the town administrator in the negotiations at its discretion.

SECTION 6E. PROCUREMENT RESPONSIBILITIES AND POWERS OF THE TOWN ADMINISTRATOR

The town administrator shall be the chief procurement officer, pursuant to chapter 30B of the General Laws and all other applicable statutes, procedures, and bylaws, shall be responsible for purchasing for all town functions and departments, and shall award all contracts needed for the operation of all town functions and departments, except for the school department, unless otherwise specifically requested by the school committee.

SECTION 7. ORGANIZATION OF AGENCIES

The town administrator may reorganize, consolidate, establish, or abolish any department or position under the town administrator's direction or supervision at the town administrator's discretion and with the board of selectmen's approval. With the approval of both the board of selectmen and finance committee, the town administrator may transfer all or part of any unexpended appropriation of a discontinued department, board, or office to any other town department, board, or office under the board of selectmen's jurisdiction.

SECTION 8. CONTINUATION OF EXISTING LAWS, CONTRACTS, AND EMPLOYMENT

(a) All laws, bylaws, votes, rules and regulations whether enacted by authority of the Town or any other authority, which are in force in the Town of Wayland on the effective date of this act, or any portion or portions thereof, not inconsistent with the provisions of this act, shall continue in full force and effect until otherwise provided by other law, bylaws, votes, rules and regulations, respectively.

(b) No contract existing and no action at law or suit in equity, or other proceeding pending on the effective date of this act, or the time of revocation of such acceptance, shall be affected by such acceptance or revocation of this act.

(c) Any person holding a town office or employment under the Town shall retain such office or employment and shall continue to perform his duties until provisions shall have been made in accordance with this act for the performance of said duties by another person or agency. No person who continues in the permanent full-time service or employment of the Town shall forfeit his pay grade or time in service.

SECTION 9. DISPOSITION OF CERTAIN SPECIAL LAWS

The following special laws, and any amendment thereto, which were enacted for special purposes and were limited in time by their own provisions, are hereby recognized as obsolete and are to stand repealed, but all acts taken under the authority of the said special laws is hereby preserved: [put list here]

SECTION 10. SUBMISSION TO VOTERS

This act shall be submitted to the voters of the Town of Wayland for acceptance at an annual or special town election in the form of the following question:

"Shall an act passed by the General Court in the year 2018 titled 'An Act Relative To The Position Of Town Administrator In The Town Of Wayland,' be accepted?"

The Town shall include below the ballot question a fair and concise summary thereof prepared by town counsel and approved by the board of selectmen. If a majority of votes cast in answer to this question is in the affirmative, Sections 1 through 9 of this act shall take effect sixty (60) days following acceptance by the voters.

SECTION 11. TIME OF TAKING EFFECT

Section 10 of this act shall take effect upon its passage.

Comment [mjw12]: Decision point 12: The board could also decide to make it so this takes effect on passage and does not require going back to the voters.

Comment [mjw13]: Note that further transition provisions may be necessary, but these should be filled in only after all other decisions are made.

DRAFT