

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

Minutes of the Ad Hoc BOE Charter Revision Review virtual meeting held December 30, 2020  
at 2:00 p.m.

M. Ku,  
D. Zukowski

Ms. Ku called the meeting to order at 2:00 p.m. and stated it was being recorded

Item 1 – Public Participation

None

Item 2 – Discussion of Possible Charter Revisions from the BOE

Ms. Zukowski and Ms. Ku discussed correspondence with legal counsel regarding the Education Non-Lapsing Account (Attachment A) and Charter draft revision proposals. The proposals were modified and will be submitted for BOE consideration (Attachment B).

Item 3 – Public Participation

None

The meeting was adjourned at 4:27pm

# ATTACHMENT A



NEWTOWN PUBLIC SCHOOLS

Ku, Michelle <kum\_boe@newtown.k12.ct.us>

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## Newtown Charter Review

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Ku, Michelle <kum\_boe@newtown.k12.ct.us>  
To: "Ritter, Matthew D." <MRitter@goodwin.com>

Mon, Dec 28, 2020 at 4:43 PM

Season's Greetings, Matt. I hope you are well.

The Board of Education has been asked to submit any proposed Charter revisions to our Legislative Council. We are looking at several, but one in particular has been proposed regarding the Education Non-Lapsing Account. It reads as follows:

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

#### Reason to review:

When the fiscal year ends, any BOE budget surplus may be added to the BOE Non-Lapsing Account, per Connecticut General Statute 10-248a, newly amended<sup>1</sup>. In the Oct 20, 2020 Town Counsel legal opinion RE: Procedure to Transfer Board of Education Surplus at the End of the Fiscal Year, D. Grogins states that such funds are "similar to a 'special appropriation,'" though not technically a special appropriation.

#### Recommendation:

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

I have a couple of questions for you regarding this proposal. 1) Is it correct to refer to deposits into the non-lapsing account as "appropriations"? (The concern is that if it is viewed as an appropriation - and I don't think the statute defines it in that way - it will have to follow an appropriations process) 2) Is it appropriate to ask that the process be referenced in the Charter? 3) Is it appropriate to ask that the process be adopted in the town ordinances/regulations?

Thank you,

Michelle Embree Ku  
Newtown Board of Education, Chair  
203-364-9862



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## Newtown Charter Review

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Ritter, Matthew D. <MRitter@goodwin.com>  
To: "Ku, Michelle" <kum\_boe@newtown.k12.ct.us>

Mon, Dec 28, 2020 at 7:50 PM

Hi Michelle - happy new year!

1. I agree. I would not use the word "appropriation" because it triggers the Town Charter requirements and it is not used in the statute. 10-248a uses the word "deposit" because these are funds that have already been appropriated through the normal budget process and are authorized to be expended. They are "unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town."
2. I am not sure I would include this in the Town Charter because this is a statute that is likely to be amended in the future (1% to 2% for example).
3. An ordinance seems more appropriate. It is more binding than a resolution or policy but also can be amended far more easily than a Town Charter provision.

Let me know if you have any questions. Thanks, Matt

Matthew D. Ritter  
(860) 251-5092

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**From:** Ku, Michelle <kum\_boe@newtown.k12.ct.us>  
**Sent:** Monday, December 28, 2020 4:44 PM  
**To:** Ritter, Matthew D. <MRitter@goodwin.com>  
**Subject:** Newtown Charter Review

\*EXTERNAL EMAIL\*

[Quoted text hidden]

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ATTACHMENT A

**ATTACHMENT B**

**BOE Elections**

Town Charter Section 3-15(b) reads:

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

Reason to review:

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

Recommendation:

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

**Date for Referendum**

Town Charter 6-14(a) reads:

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

Reason for Review:

Historically, a small percentage of Newtown’s voting population votes during budget referenda. Changing the date or accessibility of the referendum might increase voter turnout.

Recommendation:

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

**Special Appropriations**

Town Charter Section 6-35(b) reads:

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

Town Charter Section 6-35(c) reads:

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

Reason to review:

The appropriations process as outlined in 6-35(b)-(c) does not include the Board of Education. This is not consistent to that of budgetary and CIP appropriations. For budget appropriation requests, both the Board of Selectmen and the Board of Education prepare their respective requests, and provide those requests to the Board of Finance. For the Capital Improvement Plan (CIP), newly amended, the Board of Selectmen and the Board of Education also prepare their respective requests, and provide those requests to the Board of Finance. These processes suggest that the BOE regularly initiates appropriation requests.

Recommendation:

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

**Board of Education Non-Lapsing Account**

Connecticut General Statute § 10-248a, newly amended, reads:

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

Reason to review:

In “Procedure to Transfer Board of Education Surplus at the End of the Fiscal Year” sent to Dan Rosenthal, First Selectman, and Paul Lundquist, Chairman, Legislative Council, dated Oct 20, 2020, D. Grogins states that such funds are “similar to a ‘special appropriation,’” though not technically a special appropriation.

Recommendation:

We recommend that a multi-board process governing the Board of Education Non-Lapsing Account be set forth in a Financial Regulation. Furthermore, we recommend that the Charter clarify that funds deposited to the Account do not apply to the Legislative Council’s appropriation authority.

**Appropriating/Fiscal Authority**Town Charter 1-20 Summary of Governance defines:

(a) The Chief Executive and Administrative Officer of the Town, (b) The administrative body of the Town, and (c) The legislative body of the Town. It does not define the appropriating authority of the Town nor does it include the concept of a fiscal authority.

Reason for Review:

In the CT General Statutes (C.G.S.) that pertain to local education, there is a phrase that is used when local fiscal oversight is required. The phrase (with slight differences) is used in the following (not necessarily exhaustive) list of uses within statutes pertaining to local education:

Statutes concerning Teachers and Superintendents:

1) C.G.S. §10-153b(a): Fiscal authority used in determining a key date in contract negotiations:

“‘Budget submission date’ means the date on which a school district is to submit its itemized estimate of the cost of maintenance of public schools for the next following year to **the board of finance in each town having a board of finance, to the board of selectmen in each town having no board of finance and, in any city having a board of finance, to said board, and otherwise to the authority making appropriations therein.**”

This term is present in C.G.S. §10-153d “Meeting between board of education and fiscal authority required. Duty to negotiate. Procedure if legislative body rejects contract,” and C.G.S. §10-153f “Mediation and arbitration of disagreements.”

From what the BOE currently understands, the Board of Finance is considered the fiscal authority for determining the timeline for negotiations, based on the process outlined in section 6-05(a) of the Town Charter.

2) C.G.S. §10-153d(a): Fiscal authority for participation in negotiations.

“Within thirty days prior to the date on which the local or regional board of education is to commence negotiations pursuant to this section, such board of education shall meet and confer with **the board of finance in each town or city having a board of finance, with the board of selectmen in each town having no board of finance and otherwise with the authority making appropriations therein.** A member of such board of finance, such board of selectmen, or such other authority making appropriations, shall be permitted to be present during negotiations pursuant to this section and shall provide such fiscal information as may be requested by the board of education.”

From what the BOE understands, the fiscal authority would again be the Board of Finance, as it would be expected to be the same throughout the Teachers and Superintendents contract negotiations, even though it would be the Legislative Council (i.e., the legislative body) that would take the role of approving or rejecting any contract.

3) C.G.S. §10-222: Fiscal authority for BOE budget.

**“Each local board of education shall prepare an itemized estimate of the cost of maintenance of public schools for the ensuing year and shall submit such estimate to the board of finance in each town or city having a board of finance, to the board of selectmen in each town having no board of finance or otherwise to the authority making appropriations for the school district, not later than two months preceding the annual meeting at which appropriations are to be made.”**

As in 1) above, the Charter clearly states that the BOE refers its budget request to the Board of Finance, Presumably, this fulfills the statutorily required timeline, whereas the date, as defined by Charter, that the Board of Education budget is submitted to the Legislative Council would not.

4) C.G.S. §10-248a, as amended:

**“... the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district may deposit into a nonlapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town...”**

Since the inception of Education Non-Lapsing Account, Newtown has depended on the Board of Finance to be the fiscal authority to make decisions regarding the deposit of the BOE budget surplus to the Non-Lapsing Account. However, recently the Town’s counsel has determined that the Legislative Council should be the fiscal authority, based on it’s role as the Town’s appropriation authority. This opinion is available in a letter by D. Grogins, regarding “Procedure to Transfer Board of Education Surplus at the End of the Fiscal Year” sent to Dan Rosenthal, First Selectman, and Paul Lundquist, Chairman, Legislative Council, dated Oct 20, 2020.

Recommendation:

Clearly define the “fiscal authority” and “appropriations authority” for Newtown.



**Practices related to Appropriating/Fiscal Authority**

Town Charter Chapter 6:

Prescribes the budget and appropriations processes.

Reason for Review:

Because the Newtown Charter prescribes both a Board of Finance AND an “authority making appropriations” (i.e. Legislative Council), there is redundancy in processes and duplicated efforts. Annually, district personnel and elected officials spend much time deliberating over budgets, Capital Improvement Plans and other financial decisions. The Education Subcommittee of the Legislative Council or the Legislative Council as a whole often repeats the process that the Board of Finance conducts. The Legislative Council can and sometimes does override the decisions of the Board of Finance.

Recommendation:

Review the purpose, cost and benefit of the additional layers of evaluation.

**Regulation Review**

Town Charter Section 5-10(a) reads:

“... Any proposed regulation, amendment or repeal shall be referred to the Board of Selectmen for comment or consultation prior to action. A similar reference shall be made to the Board of Education or other **Town Body** if its interests is affected. All regulations regarding financial matters shall be referred for review and recommendation to or may originate from the Board of Finance prior to action. Referrals can be acted on by the Legislative Council after 90 days. Such financial regulations shall also be referred to the Board of Selectman and the Finance Director prior to action.”

Reason to review:

The last sentence of the paragraph does not include the Board of Education, yet the Board of Education should review and have the opportunity to provide input on financial regulations that might affect Board of Education operations.

Recommendation:

Add the Board of Education.

## **Town Departments versus departments of the Town**

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

### Reason for Review:

The word “department” generally means an organization that has an implied reporting structure within an organization as well as financial responsibilities associated with appropriated funds. The Board of Education, unlike the other entities included in the definition, is an agency of the state though plays a role comparable to that of the Board of Selectman. The term “**Town Department**” may be confused with “municipal department,” leading readers of the Charter think that the Charter’s administrative sections specifically for the **Town** also apply to the BOE.

### Recommendation:

Replace the term “Town Department” with “Appropriation Assignee,” “Newtown Agency” or another term that more clearly focuses on the assignment of funds.

Review the following sections that currently reference “Town Department” to determine whether the language accurately applies to the Board of Education and current practices. All uses of the term “Town Department” are listed below:

1-05(a): Is this the case that the Town would subsume all right and obligations of the BOE, if the BOE were unable to fulfill its responsibilities?

4-05(c)(1): Is it the case that the Finance Director is responsible for maintaining “general cost accounting system” for the BOE? If not, should “other than the Board of Education” be added?

4-05(c)(3): Is it the case that the Finance Director has “custody of all funds belonging to” the BOE and makes “such deposits or investments as he or she deems in the best interest of the Town within the limits imposed on such deposits or investments by the General Statute” without necessarily consulting with the BOE?

6-05(b): The BOE is exempted from “**Town Department**” regarding BOS budget process.

6-10(a): Finance Director must be (reasonably) available on request to advise on budget questions for all **Town Departments**.

6-40(a): All **Town Departments** are required to “submit a Financial Impact Statement to the Board of Finance and the Legislative Council...”

7-05(b): “The system of accounts used by the **Town Departments** shall be that prescribed by the General Statutes as supplemented by regulations adopted by the Board of Finance and approved by the Legislative Council and in accordance with generally accepted accounting principles.”

7-05(d): Does the following apply to the BOE? “All **Town Departments** and officers shall report and remit all receipts to the Finance Director as often as he or she may deem desirable but not more often than daily.”

7-15(a): "The Board of Finance shall keep under review the budget of the Town and shall by regulation prescribe periodic reports of receipts and expenditures for which purpose said Board of Finance shall have access to the books and records of any **Town Department**."

7-15(c): "Neither the Board of Selectmen nor the Board of Education shall draw any order upon the Town unless the Finance Director confirms that there are appropriations within the requesting **Town Department** to cover the request."

7-15(d): The BOE is exempted from "**Town Department**" regarding supplies and contract procurement.

7-15(e): "No officer or **Town Department** shall expend or vote to incur any liability or expense by contract or otherwise, or enter into any contract that would obligate the Town to expend in excess of an approved departmental line item appropriation."

7-15(f): "All sums not in excess of \$50,000 which may become due and payable to the Town or any **Town Department** by virtue of any loss or damage suffered by persons or property entrusted to the care, supervision or management of any such department shall be deposited in a special account and segregated by the Finance Director."

7-25(b): "No Special Appropriation shall be made, no purchase, grant nor gift of real or tangible personal property shall be accepted by any **Town Department** as provided in Sections 6-35, 6-40, and 8-05, until the Board of Finance and Legislative Council have received and have had thirty-five days to give due consideration to a Financial Impact Statement."

**Finance Director**

Town Charter Section 4-05(c) indicates the the Finance Director shall:

“(9) Prepare a cost analysis of all labor contracts, pension plans and insurance plans prior to the signing of any such contracts or plans; and

(10) Assist in all labor negotiations serving as a consultant to the labor negotiators representing the **Town.**”

Reason to review:

The Board of Education conducts a separate negotiation process

Recommendation:

Ensure that it is clear that these apply only to the town, and not the BOE.

**Budget Process**

Town Charter Section 6-20(f) 2 reads:

“Prior to subsequent budget referenda, if any, amendments made by the Board of Selectman and/or the Board of Education to budget proposals shall not be exceeded by the Legislative Council.”

Reason to review:

It is not clear to us what this means.

Recommendation:

Please clarify.

### **Town Clerk and Meeting Conduct**

#### Town Charter Section 2-01(c) reads:

“All elected and appointive **Town Bodies** may make rules for the conduct of their meetings and the manner for accomplishing their duties. Such rules shall be filed with the Town Clerk.”

#### Reason to review:

Bylaws for the Board of Education are filed along with the District Policies in the District Central Office and are publicly available on the District website.

#### Recommendation:

Review whether it is necessary for the Board of Education to file bylaws with the Town Clerk.

### **Ex Officio membership on the Board of Education**

#### Town Charter Section 2-01(d) reads:

“The First Selectman shall be an ex officio member of all **Town Bodies**, but without vote and not counted for the purpose of having a quorum except as a member of the Board of Selectmen. The First Selectman shall be given reasonable notice of all meetings of **Town Bodies** by their chairmen or secretaries, and may in writing appoint another member of the Board of Selectmen to represent him or her at any meeting of such **Town Body**.”

#### Reason to review:

Should the Board of Education be excluded from this? It seems inconsistent with the Newtown government structure in which the Board of Selectman have a role parallel to the Board of Education, and the Superintendent has a role parallel to the that of the First Selectman?

#### Recommendation:

Review

### **Voting at Meetings**

#### Town Charter Section 2-25(a) reads:

“It shall be the duty of every member present at any Town Body meeting to vote affirmatively or negatively on each question raised. Should a member have a conflict of interest, said member shall refrain from discussion and voting. The reason for the conflict of interest need not be stated nor made part of the record.”

#### Reason to review:

There may be times when abstaining is appropriate. For example, when a person was not present for discussion.

#### Recommendation:

Review

### **Filling Vacancies**

#### Town Charter Section 2-31 outlines procedures for filling vacancies on elected Town bodies:

#### Reason to review:

Should the statute that is applicable to the Board of Education (C.G.S. §10-219) be referenced in the same way as the statute that applies to the Board of Selectman is referenced?

#### Recommendation:

Review

ATTACHMENT A

1/7/2021

Newtown Public Schools Mail - Newtown Charter Review



Ku, Michelle <kum\_boe@newtown.k12.ct.us>

Newtown Charter Review

Ku, Michelle <kum\_boe@newtown.k12.ct.us>  
To: Ritter, Matthew D. <MRitter@goodwin.com>

Mon, Dec 28, 2020 at 4:43 PM

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Thank you.

Michelle Embree Ku  
Newtown Board of Education, Chair  
203-364-6862

<https://mail.google.com/mail/u/0/?ik=702003a344&view=pt&search=all&permmsgid=msg-a%3A-1164630307133473055&siml=msg-a%3A-116463030...> 1/1

1/7/2021

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3. An ordinance seems more appropriate. It is more binding than a resolution or policy but also can be amended far more easily than a Town Charter provision.

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Matthew D. Ritter  
(404) 381-3092

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<https://mail.google.com/mail/u/0/?ik=702003a344&view=pt&search=all&permmsgid=msg-a%3A-1164630307133473055&siml=msg-a%3A-116463030...> 1/2