

Legislative Council Special Meeting Minutes

Minutes are subject at approval at the next meeting.

The Legislative Council held a special meeting on June 8, 2022 at 7:30pm. The meeting was held in the Council Chambers at 3 Primrose Street, Newtown, CT.

Mr Capeci called the meeting to order at 7:35pm and opened with a salute to the flag.

Present: Michelle Ku, Chris Gardner, Tom Long, Lisa Kessler, Ryan Knapp, Jeff Capeci, Charles Gardner (zoom), Matt Mihalcik, Phillip Carroll, William DeRosa (zoom), Angela Curi (zoom)

Also Present: Dan Rosenthal, Andrew Buzzi and Atty Steve Mednick (zoom)

Excused: Dan Honan

Voter Comment:

Bruce Walczak, Glover Ave

Mr Walczak spoke in regard to filling vacancies on appointed boards. A copy is attached.

Leon Ambrose, 13 Long View, SH

Mr Ambrose lives in Monroe but owns property in Newtown. He spoke regarding the final public hearing regarding the truck warehouse.

Mr Capeci recommended FOIA to Mr Ambrose and Mr Knapp recommended written comments.

Communications: one was received and is attached.

Committee Reports: none

Old Business:

Charter Revision Draft Report

Mr Capeci explained that the Council has until next Wednesday to ask questions and express concerns. They have to decide to accept in full or to put questions back to the Commission and next Wednesday is the cut off.

Mr Capeci had forwarded Atty Mednicks proposed revisions to council members and Atty Buzzi for review. This was their opportunity to ask questions.

Ms Ku started the question process. She was looking for the number of the state statute used for BOE election process. There needs to be more clarity in maximum members of any party on the BOE. It appears to be a conflict with the Charter and Ordinance regarding 4 or 5 members.

Mr Knapp stated that the ordinance was developed to allow more choice for the voters and adopted stricter standard by the home rule option. The cap is for the number voted for and allowed to nominate. Winners are chosen by voters with the limit of minority representation.

The issue needs to be resolved in the Charter and have the statute referenced. This issue has been through two Charter Revisions. The ordinance adapts statute 9-204B. The Charter can be more limiting than statute.

Elimination of Building Appeals Board – State statute permits you to create one so it is not needed in Charter. If needed a Board can be appointed or the appeal can be made to the State to the Department of Administrative Services.

Civilian Police Review Board – This only allows subpoena power as additional power. The BOS tried to make it clear that the Board is part of the elected body to remove any ambiguity. A Civilian Review Board would need extensive training different than the Police Commission. Education and training requirements could be added to the Charter or ordinance. Elected officials are more accountable to the voters.

Mr Knapp questioned Atty Buzzi on what is needed to be sent back to the Charter Review Commission for consideration.

Atty Mednick offered to send a Comprehensive Resolution example to the Chair. Atty Mednick sent 28 recommendations to the Council. Once the Charter Revision Commission sends the work back to the Council, they will get a yay or nay in whole or in part of the revised draft.

1-25a7 BOE Town Department -n The Attorney's recommendation may have better wording and it goes along with the discussions which were held by the Commission.

6-20f2 failed referendum process – states BOS and BOE submit recommendations to Council goes along with previous revision. Council cannot increase to more than asked for by BOS and BOE. How does this work with the advisory question? The amount could be increased but not more than the original budget submitted to the Council.

Mr Long suggested 6-25e2 be adjusted as well.

To fill appointed vacancy – Appointed bodies should be the most qualified not indicated by party other than minority representation. An open seat would be given to the best candidate a mid term opening should be the same.

Mr Rosenthal stated that appointed members usually resign during their term. As long as there are no issues, they are offered the opportunity to renew their term. This means that the vacancies for mid term which are restricting, limits the opportunity for the largest pool of applicants.

There was concern over possible embarrassment of discussion of candidates. Concern over the additional work for First Selectman. Currently, Town Committees have the ability to put a minor party candidate up for a position.

Fairfield Hills Authority – They are ultimately authorized by P&Z, and they have a seat at the table during the lease process. The Selectman makes the decision. They definitely have a purpose. They manage the campus under BOS. Question whether it should be a Commission rather than Authority.

In Charter they should have name, term and then refer to the ordinance.

Budget Referendum – with the removal of BOF, the LC was given three extra weeks to set a budget. Could we take some of the time off to allow for the ballots to be available earlier?

145-10a Regulations are given 90 days prior to enacting but ordinances are less time.

6-35 Special/Emergency Appropriations – There was concern over the amounts allowed to appropriate. The amounts were reduced. A recommendation was special appropriation up to one mill with none over \$1.5 million. A state of emergency allows the First Selectman (by statute) to spend to get things going the then Council needs to authorize additional spending. There are guidelines that need to be followed to call a state of emergency. Since the buildings are all considered town buildings, emergency appropriations should be BOS not BOE.

The oil spill at Reed was referenced. While it took several months to get through the appropriation process, the emergency was addressed immediately. First Selectman has emergency authority for a specific amount of time according to statute but the Charter can limit the time before Council intervenes.

Announcements: - The hope is to pass a quick resolution next Wednesday to pass on to the Charter Revision Commission. The meeting will also have a discussion on FFH historic credits.

Mr Knapp moved to adjourn the meeting with Mr Mihalcik seconding the meeting.

The meeting was adjourned at 10:00pm.

Respectfully submitted,

LeReine Frampton, temporary clerk

Good evening, I want to thank the Charter Commission for all the hard work they put in over the last year and a half and the Legislative Council for the work that you have and will spend on the Charter Revision process. It's a very important and complicated assignment you all have agreed to take on.

I'm here tonight to talk about the Appointed Commission process. I am not addressing elected boards as they represent the wished of the voters. The process for elected boards works well and retains the wished of the voters.

Currently the appointment of registered voters to open positions on Appointed Commissions is performed by a majority vote of the Board of Selectmen, its designed to fill appointments with the best qualified candidates. The BOS is free to appoint any registered voter to Appointed commissions regardless of party affiliation and only subject to the minority representation rules of the state. It's a nonpartisan nonpolitical process. The process seems to work very well. I'm not aware of any movement to change the full-term appointment process by this commission except for the time the BOS must make an appointment, which you are recommending be increased. I support that extended time. I'm assuming from this that the Charter Commission likes the open term appointment process to Appointed Commissions.

However, when a vacancy occurs during an appointee's term on Appointed Commission the process changes substantially. The process is no longer solely designed to appoint the best candidate, subject to minority representation. The rules no longer allow any registered voter to be appointed. The rules become partisan. If the position was originally filled with a member of a political party the

replacement must be from the same party or an unaffiliated voter. The new rules eliminate any member of the other major political party from being appointed to fill the vacancy. It also prohibits, in practice, any member of any minor party from being appointed to fill the vacancy on Appointed Commissions. The pool of candidates is significantly reduced. The most qualified candidate may not be appointed. The vacancy process always disenfranchises a large portion of the registered voters in Newtown. The objective of this process appears to be to protect the representation of either of the two major parties. It's Newton's form of gerrymandering that we read so much about in the paper.

Some complexing examples to reinforce my point are. If a member of a minor party vacates their appointed commission position early, no Democrat nor Republican may be appointed. If First Selectman Rosenfeld decides not to seek reelection and wished to fill a during term vacancy in an appointed commission position he cannot be appointed as he is a member of a minor party. *if an unaffiliated*

vacates early - only an unaffiliated can fill the spot - No Dems No

I am suggesting to the legislative Council that this partisan process *Republican - no minor parties* should be eliminated. My research indicates that we are the only town in northern Fairfield County to have a requirement of only appointing someone from the existing party or from unaffiliated voters to vacancies on Appointed Commissions, eliminating members of the other major party and all minor parties. I'll read a partial list to reinforce that. When a vacancy occurs in these towns on Appointed Commissions the appointing authority, that's the BOS in Newtown, considers the vacancy open and are to be filled without regard to political party except to ensure minority party representation. Richfield is open to anyone, Bethel is open to anyone, Brookfield is open to anyone, Southbury is open to

anyone, Wilton is open to anyone. Let's go further away, Cheshire, Fairfield, New Canaan are all open to any registered voter.

I am suggested a very simple solution to this process. Simply make all vacated appointed positions to Appointed Commission open, the same as the end of term vacancies are treated. We would mirror the well-regarded process currently utilized to fill end of term open appointed positions on Appointed Commissions. It's a simple fix, it provides the largest pool of candidates to the board of selectmen. It doesn't disenfranchise any group of registered voters and we know the process works because we currently use it to fill open positions on Appointed Commissions. Newtown should not remain an outlier on this issue and the Council should include treating all vacancies on Appointed Commission as open positions.

Discussed Mr. Buzz; Comment

Thank you
Bruce Walczak
12 Glover Ave.
Newtown CT.



Lereine Frampton <lereine.frampton@newtown-ct.gov>

Fw: Form submission from: Contact the Newtown Legislative Council

1 message

Jeffrey Capeci <Jeff@thecapecis.com>

Wed, Jun 8, 2022 at 9:38 PM

Reply-To: Jeffrey Capeci <Jeff@thecapecis.com>

To: Lereine Frampton <lereine.frampton@newtown-ct.gov>

LeReine,

Please attached this voter comment to the meeting minutes.

Thanks,
Jeff

----- Forwarded Message -----

From: Glenn Kessler via Newtown CT <cmsmailer@civicplus.com>**To:** jcapeci <jeff@thecapecis.com>**Sent:** Tuesday, June 7, 2022, 03:07:53 PM EDT**Subject:** Form submission from: Contact the Newtown Legislative Council

Submitted on Tuesday, June 7, 2022 - 3:07pm

Submitted by anonymous user: 32.212.144.117

Submitted values are:

Your name: Glenn Kessler

Your e-mail address: glenk@frontier.com

Subject: Wharton Truck Terminal, P&Z Reform

Message:

Public Silenced At Public Hearing

I had the displeasure of attending the Wharton 76 dock 348,000 ft2 Truck Terminal P& Z meeting on 6/2 and was appalled at the treatment afforded the taxpayers of Newtown by the committee.

I witnessed extremely deferential treatment of applicants and their hired spokesmen/experts who were repeatedly granted unlimited time to speak coupled with an utter contempt for over 200 townsfolk gathered and their legitimate concerns.

Concerns like: public health and safety, this project is right across the street from The Educational Playcare Childcare Center 285 children 6 weeks to 12 yrs. in age,

additionally thousands of tons of carcinogenic pollutants will be generated poisoning their air & water supply coupled with a horrendous increase in traffic ,with subsequent injuries from accidents, noise pollution, light pollution, endangerment of a sensitive aquifer and wildlife, a decrease in property values, and increased taxes.

Townsfolk were threatened with expulsion for attempting to exercise their first amendment right of free speech, this was at a public hearing.

The residents lawyer John Parks representing their interests was denied a rebuttal to newly presented information re:

11.01.242 Voting Required by Petition. The video tape should show a town official waving a clenched fist towards women questioning him. Officials shouted at the public exhibiting rude disrespectful behavior, and a disregard for the democratic process.

Ultimately Police were called in to silence opposition.

Clearly the current system is broken and needs to be changed!

As it currently stands this is a stacked deck. The applicant is well organized has the resources to hire attorneys and sympathetic experts and generally gets it done before the public is even aware it exists. The public needs more time to become aware and to respond. They especially need the resources to hire their own experts, a paid public attorney is essential.

In cases were the majority of the town is subject to a substantial negative impact a public referendum is imperative and should be established.

Term limits need to be enacted. Some of the officials have served for over fifteen years.

Qualifications for service need to be instituted. While they have yet to vote the P&Z commissioners seem to have little regard for their own Article XI Special Exception regulations as pointed out by Attorney Parks and by numerous public comments. Relying on a board that lack a guaranteed minimum set of qualifications has not and is not serving the public good.

All of the applicable zoning regulations need to be enforced. Some of the overlooked regulations are:

Article 11.01.420 Condition Requirements

The following conditions shall be met:

Article 11.01.421 The location, type, character, and size of the use, and of any building or other structure shall be in harmony with the appropriate and orderly development of the town and the neighborhood, and will not hinder or discourage the appropriate development and use of adjacent property.

Article 11.01.422 The architectural design, type, size, location, and use of any structure shall be in harmony and consistent with the design of other buildings on the lot and neighboring properties within 1,000 feet of the perimeter of the lot for which the Special Exception is sought.

Article 11.01.423 The proposed use shall not depreciate adjacent property values.

Article 11.01.424 Construction proposed on the site shall be carried out so as to utilize the site in a manner which results in the least defacement of the natural features thereon, such as trees, rock outcroppings, etc.

Article 11.01.425 The site on which the proposed use is to be located shall be suitably landscaped to protect the neighborhood and adjacent property, and the proposed use of the property will not result in the loss of any existing buffering. Adequate buffering shall be provided between the proposed use and the adjacent property shall be provided.

Article 11.01.426 The nature and location of the proposed use, and of any building or other structure in connection therewith, is such that there is adequate access to it for the purpose of fire protection, police protection, and other emergency services.

Article 11.01.427 The streets serving the proposed use shall be adequate to carry all prospective traffic. Adequate provision shall be made for entering and leaving the subject site in such a manner that no undue hazard to traffic or undue traffic congestion shall be created.

Article 11.01.428 The lot shall contain the minimum area required for the Special Exception use.

People choose to live in Newtown for it's quiet New England charm not for a truck terminal and more gas stations. The current system is not serving the public welfare and needs to be changed.

Glenn Kessler

5 The Old Rd.
Newtown, CT
203 270-8069

The results of this submission may be viewed at:

<https://www.newtown-ct.gov/node/86983/submission/146666>

Steven G. Mednick

Attorney

1 June 2022

Hon. Daniel Rosenthal
First Selectman
Town of Newtown
3 Primrose Street
Newtown, CT 06470

Hon. Jeffrey Capeci (Jeff@thecapecis.com)
Chair, Legislative Council
Town of Newtown
3 Primrose Street
Newtown, CT 06470

cc: Andrew J. Buzzi, Jr. Chair, Charter Revision Commission
2021newtowncrtcchair@gmail.com

Re: Review of the Report of the 2022 Newtown Charter Revision Commission

Dear Mr. First Selectman, Mr. Chairman and Members of the Legislative Council:

I have been retained to serve as special counsel to the Town of Newtown ("Town") for the sole purpose of engaging in a review of the Report of the Charter Revision Commission ("CRC") "limited to any inconsistencies, unintended consequences or conflicts within or with statute, and charge that the scope of the review not expand to include reconsidering actions taken or not taken (by the CRC)" (See, Minutes of the Legislative Council Regular Meeting, dated May 4, 2022). Accordingly, this opinion will assess the CRC report with an eye on compliance with state statutes, case law and other relevant legal documents, including applicable collective bargaining agreements and other relevant documents. Not included in the original scope are two inquiries from members of the Legislative Council, which I believe can be addressed within the original intended scope.

The CRC was created in March of 2021 and conducted twenty-five meetings and two statutory public hearings, meeting with the public, stakeholders, Town Legal Counsel and elected representatives. As you will see in this review most of the outcomes and proposed revisions focus on both the future of the Board of Finance as well as the interactions and role of the Board of Education under the Charter.

Office Address: 142 Temple Street, 2nd Floor, New Haven, Connecticut 06510
Telephone: 203.752.9198
Facsimile: 203.752.9367
E-Mail: smednick01@snet.net
Website: www.mednicklaw.com

Steven G. Mednick

Attorney

Attached are my questions for the Charter Revision Draft review. I have tried not to question the CRC's decisions, only how the wording will play out in practice.

In the interest of clarify, I am going to tackle the issues by subject matter.

I

Issues pertaining to the Board of Education.

Section	Proposed Revision
§1-25(a)(7)	Notwithstanding the foregoing, the Board of Education shall be exempted from the definition of "Town Department" to the extent that it is inconsistent with their statutory authority.

Comment In my view, exempting any Board of Education from the definition of Department may be a bridge too far and a slippery slope that you may want to avoid if you want to maintain a permissible element of control over the education department¹.

The administrative arm of a single-town board of education is, in fact, a Town department. Unlike other departments, there are statutory responsibilities and requirements that may exempt education administration from certain functions required of other town departments. I am uneasy about exemptions such as these; however, if you want to include an exemption I would narrow this exemption as follows:

"Notwithstanding the foregoing, the Board of Education shall be exempt from duties or functions required of Town Departments under this Charter, only to the extent such duties or functions would violate specific provisions of the General Statutes applicable to boards of education and the administration of such entities".

Section	Proposed Revision
§2-31(c)	Adds the following procedure for appointing a successor to a vacancy on the Board of Education ("BoE"), as follows:

- **First Step (within 45 days²):** A majority vote of the remaining BoE members of the same political party of the former member;

¹ I hope this also addresses the issue raised by Councilmember Ryan Knapp (District 3).

² I might modify this language as follows: "up to and including 11:59:59 P.M. on the forty-fifth (45th) day following the declaration of a vacancy or the end of the predecessor's term." There should be

Steven G. Mednick

Attorney

- **Second Step (after 45 days)³:** A majority vote of the remaining members regardless of party affiliation;
- **Third Step (after 90 days)⁴:** The current Chair of the Board of Education shall appoint the successor.

It appears that the vacancy is filed with the Town Clerk and, then the Town Clerk presumably declares that a vacancy exists. Since this provision already exists for the Legislative Council, I am assuming that somewhere there exists a protocol for determining when the clock starts ticking.

- The provision also includes the following "end of the world" or "judgment day" clause which would require a special election: "Should all seats on the Board of Education become simultaneously vacant, then a special election shall be called to fill all seats." Again, this is similar to current §2-31(a) (3).
- Finally, there is a provision addressing the term of the successor: "Any successor(s) so appointed shall serve until the next regular town election for Board of Education positions, at which election a successor shall be elected for the unexpired portion of the term, the official ballot specifying the vacancy to be filled."

Comment

C.G.S. §10-219 addresses the procedures for filling a vacancy on local board of education. The default under state law is: "filling the position *"by the remaining members of said board"* without regard to the political party of the former member or the remaining members. That default is available "unless otherwise provided by charter or special act." The CRC is attempting to provide the same default for the Board of Education.

Filling such vacant positions by a member of the party is not an unusual provision; on the other hand, the appointing authority usually defaults to all of the remaining members of the body, as opposed to the members of the same party. However, as the statute seems to indicate this is a matter of local choice.

clear language in the Charter setting forth the baseline date for the vacancy, which might pose a challenge should the member not file a written or verbal resignation, officially or by public statement.

³ Likewise: "up to and including 11:59:59 P.M. on the ninetieth (90th) day following the declaration of a vacancy or the end of the predecessor's term."

⁴ "at 12:00 A.M. on the ninety-first (91st) day following the declaration of a vacancy."

Steven G. Mednick

Attorney

I have no deep understanding of the reasons for the multi-step approach; although I assume that since it already exists in the Charter there may be some reason why it is utilized in Newtown. I have created shifting appointment standards in municipalities where Mayors have been errant in their appointment responsibilities. I would simply fix the times, as set forth in the footnote ##1, 2 and 3.

With respect to filling a vacancy in the event of an unexpired term, you would need to retain the balance required by the minority party representation statute, prepare the ballot and establish the rules accordingly as required by C.G.S. §9-414 and §2-10(a) and (b)(2) of this Charter⁵.

Section	Proposed Revision
§6-35(b)-(c)	<p>(1) Under present provision §6-3(b) the First Selectman, with the "approval of the Board of Selectmen" or the Legislative Council may initiate the request for a Special Appropriation to supplement funds in the "adopted Town Budget or capital project"; while the First Selectman may initiate an Emergency Appropriation. The proposed Charter would permit the Board of Education to initiate both of these requests.</p> <p>(2) Unrelated to the Board of Education the CRC would require the First Selectman to obtain the "approval of the Board of Selectmen" to initiate an emergency appropriation request.</p>
Comment	<p>(1) Under Board of Education v. New Haven, 237 Conn 169, 184 (1996) capital funds fall within the purview of the Town not the Board of Education:</p> <p style="padding-left: 40px;">"the board of education...does not have the authority to reallocate funds appropriated to it by the city under its capital budget, unless it receives permission to do so pursuant to the charter and ordinances of the city."</p> <p style="padding-left: 40px;">Permitting the Board of Education to <i>initiate</i> the "Special Appropriation" appears to fall within the purview of the case holding.</p> <p>(2) With respect to the requirement for the First Selectman to obtain the support of the Board of Selectmen for an</p>

⁵ I hope this answers the general issue raised by Councilmember Michelle Embree Ku (District 3). As her question digs a little deeper, I believe that more due diligence would be required that goes beyond the scope of this engagement.

Steven G. Mednick
Attorney

“emergency appropriation request”, it seems to me that adding a layer of approvals may impede a chief executive officer at a time when he or she would need additional mobility. C.G.S. §28-1(8) defines “local civil preparedness emergency” or “disaster emergency” as “an emergency declared by the chief executive officer of any town or city in the event of serious disaster affecting such town or city.” Likewise, C.G.S. §28-8a(a) offers the chief executive officer substantial flexibility:

“The chief executive officer of the municipality in which a major disaster or emergency occurs, or his designee, may take action as he deems necessary to mitigate the major disaster or emergency and to secure and preserve any documents and evidence pertinent to and necessary for a future investigation.”

Moreover, C.G.S. §28-22a gives the chief executive officer the ability to “declare a local civil preparedness emergency”.

From a legal perspective the provision is not problematic. However, since §6-35(c) requires Legislative Council approval, this one additional hurdle seems to be at odds with the very clear authority granted to chief executive officers in the context of public emergencies.

II

Issues pertaining to the Board of Finance.

Section	Proposed Revision
Misc.	<ul style="list-style-type: none">• §2-115(d) (10) – Board of Selectmen to submit proposed budget to Legislative Council, in lieu of Board of Finance;• §2-125 – Repeals the Board of Finance and, according to the CRC Report, “restores the Legislative Council as the Town’s sole fiscal authority;• §3-15(a)(3) – Board of Finance removed from section entitled “Election of Boards and Commissions”;• §4-05(a) – Board of Finance removed from the process dealing with the appointment of a Finance Director;

Steven G. Mednick

Attorney

- **§4-05(c)(1)** – Board of Finance removed from the process of approving regulations pertaining to the establishment and maintenance of a general cost accounting system for the Town;
- **§4-05(c)(8)** – Board of Finance removed from the process reviewing the capital improvement plan;
- **§5-10** – Board of Finance eliminated from process of approving regulations pertaining to financial matters and regarding recommendations for regulations governing the five-year Capital Improvement Plan;
- **Chapter 6 (Budget)** – The Board of Finance is eliminated from the entire budget process in §6-01(a)(4)[Recommended Board of Finance Budget]; §6-05(a) and (b) [Budget forms required by Board of Finance]⁶; §6-15 [Board of Finance Budget Phase]; §6-20(c), (e) and (g)[Board of Finance Recommendation]; §6-25(b)(1) and (2) [Additional request Board of Finance recommendations]; §6-35(a), (d) and (g) [Board of Finance role in Special and Emergency Appropriations]; and, §6-40 [Grants and other financial assistance];
- **Chapter 7 (Financial Processes)** – The Board of Finance is eliminated from other financial processes in §7-06(b) and (c) [Regulations pertaining to the system of accounts and Designation of Independent Auditor]; §7-15(a), (b), (c)(4) and (e) [review of and access to books and records as well as approval of regulations pertaining to purchase orders and assignment of appropriation account numbers⁷]; §7-20(a) and (b) [Transfers]; and, §7-25(b) [Financial Impact Statements]
- **§8-05(c)(1)** – Financial Impact Statement

Comment

Background: There are only two required provisions in a Charter. Under C.G.S. §7-193(a)(1) and (2) a municipality shall have a legislative body and a chief executive officer. C.G.S. §7-193(b) permits municipalities to have such officers, departments, boards, commissions and agencies (“Officers and Entities”) which are:

- required by the general statutes or by the charter.

⁶ Note: This is not a legal issue; however, it is interesting that the legislative body is establishing the criteria for submission documents for a budget that is formulated by the executive.

⁷ Again, this appears to be an executive function. Does the Legislative Council have a staff to do this work? It seems that this function may be transferred to an administrative official.

Steven G. Mednick
Attorney

- specifically allowed by the general statutes or which are necessary to carry out any municipal powers, duties or responsibilities under the general statutes.

Moreover, these Officers and Entities "shall be elected, appointed and organized in the manner provided by the general statutes, except as otherwise provided by the charter or by ordinances or resolutions adopted pursuant to such charter." In this regard, municipalities may, by charter or by ordinances or resolutions adopted pursuant to such charter, alter the method of election, appointment or organization of any or all of such officers, departments, boards, commissions or agencies, including combining or separating the duties of each, unless specifically prohibited from making such alteration by the Constitution or the general statutes."

Conclusion: There is no statutory requirement to include a Board of Finance in the Charter. The Town has complete discretion in determining whether to retain or repeal these provisions.

III

Other Issues.

Section	Proposed Revision
§2-01(c)	Clarifying language: in the event there is a conflict between the Bylaws of any Town Body and the Charter or General Statutes, the Town Charter and General Statutes shall prevail.
Comment	Legally sensible; however, it should be clarified that unless there is a Special Act provision of the Charter, it should be noted that the Charter would yield to the General Statutes.
Section	Proposed Revision
§2-05(d)(4), §2-15(d); + §2-210	Elimination of Building Appeals Board
Comment	Background: C.G.S. §29-266(a) entitled "Municipal Board of Appeals" appears to require the creation of a five-member board, which members "shall meet the qualifications set forth in the State Building Code." The major responsibility of the board is to address appeals from building official decisions under the Building Code.

Steven G. Mednick
Attorney

There is a process in C.G.S. §29-266(c) which appears to require such a board.

- If, at the time that a building official makes a decision, there is no board of appeals for the municipality in which the building official serves, a person who claims to be aggrieved by such decision may submit an appeal, in writing, to the chief executive officer of such municipality.
- If, within five days, exclusive of Saturdays, Sundays and legal holidays, after the date of receipt of such appeal by such officer, the municipality fails to appoint a board of appeals from among either its own residents or residents of other municipalities, such officer shall file a notice of such failure with the building official from whom the appeal has been taken and, prior to such filing, mail a copy of the notice to the person taking the appeal.
- Such person may appeal the decision of the building official to the Codes and Standards Committee of the Department of Administrative Services within fourteen days after the filing of such notice with the building official. From the Code and Standards Committee there is an appeal to the Superior Court.
- If the municipality succeeds in appointing a board of appeals, the chief executive officer of the municipality shall immediately transmit the written appeal to such board, which shall review the appeal in accordance with the provisions of this section.

Conclusion: I am not certain how it was concluded that the ZBA or P&Z had jurisdiction in this matter. The statute does not appear to provide such authority and seems to require the appointment of such a board. The statute permits appointment of qualified board members from other municipalities to serve throughout the State. The choice would be to retain the Board or allow for the default appeal to DAS.

Section	Proposed Revision
§2-25(a)	Permits members of town bodies to abstain from the approval of minutes they did not attend. Currently, members are required "...to vote affirmatively or negatively on each questions raised."
Comment	The recommendation is consistent with Robert's Rules and other parliamentary authority.
Section	Proposed Revision

Steven G. Mednick

Attorney

§2-32(a)(1) In the case of appointed Boards and Commissions, the time-frame for appointment of successors to vacancies by the First Selectman, with the approval of the Board of Selectman, is increased from forty-five to ninety days. In the event an appointment is not forthcoming within that time-frame, the remaining members of the Board or Commission shall make the appointment.

Comment I have recommended two-tier appointment systems to many of my CRCs. As I raised with regard to the Board of Education vacancies, we may want to modify the language so that there is a clear standard for the declaration of a vacancy and the time the authority to appoint would lapse (i.e. up to and including 11:59:59 P.M. on the ninetieth (90th) day following the declaration of the vacancy or, the end of the term.

Section	Proposed Revision
§2-135(a)	Consolidate the functions of the Registrars of Vital Statistics in the Office of the Town Clerk.

Comment This is entirely consistent with C.G.S. §7-37(a), which establishes the Town Clerk as the ex-officio registrar, as follows: "The town clerks of the several towns shall be, ex officio, the registrars of vital statistics in their respective towns, except in towns where such registrars are elected or appointed under special laws, and shall be sworn to the faithful performance of their duties as such."

Section	Proposed Revision
§2-160(a)	Amend the "Summary of General Responsibilities" of the Police Commission authorizing the Commission "...to act as the Civilian Review Board with all the powers as set forth in the Connecticut General Statutes (emphasis added)"

Comment I: C.G.S. §7-294aaa permits the creation of Civilian Police Review Boards ("CPRBs") by ordinance. As a result, when this issue has arisen in charter revision processes, I have recommended including a Charter mandate for the creation of a CPRB by ordinance⁸.

II: The second issue raised by the proposal is the notion that the General Statutes has established a set of "powers" for CPRBs. Under C.G.S. §7-294aaa(a) an ordinance creating a CPRB shall prescribe the:

- *scope of authority* of the board (emphasis added);

⁸ I hope this also addresses the issue raised by Councilmember Michelle Embree Ku (District 3).

Steven G. Mednick

Attorney

- number of board members;
- process for the selection of board members, whether elected or appointed;
- term of office for board members; and,
- procedure for filling any vacancy in board membership.

Moreover, the board may also have authority to: (1) issue subpoenas to compel the attendance of witnesses before such board; and (2) require the production for examination of any books and papers that such board deems relevant to any matter under investigation or in question.

Let's talk about the "scope of authority." This provision is both a benefit and bane for advocates of civilian oversight and review. On the one hand, the municipality has been granted broad authority to establish "scope". In my view, this authority falls into the "watch out what you wish for category." For example, if your community seeks to include in the CPRB functions normally associated with a Police Commission such as hiring, promotions and discipline, you may be surprised to discover that those issues are already dealt with in a collective bargaining agreement and "out of scope" form the reach of the CPRB or Police Commission, as a matter of law. That is the bane of the statute, giving communities broad authority on the surface, which may be frustrated by provisions of CBAs which, as a matter of law, "shall prevail" when in conflict with a local charter, special act, ordinance or other rules or regulations' see, C.G.S. §7-474(f).

Thus, you may create a CPRB; however, if your scope is out of whack with the terms of a CBA you may simply find yourself driving into a brick wall. That is not to say that you shouldn't approve a CPRB; only that you need to do so with a realistic eye on the limitations of such entities under the current law.

Conclusion: There are several additional points to make. First, there is no mandate to create a CPRB under the statute. Second, the implications of authorizing the Board of Police Commissioners to act as a CPRB depends on the scope of authority granted to the Board⁹. The major clear asset and power under the CPRB law is

⁹ I hope the first and second responses address the issues raised by Councilmember Michelle Embree Ku (District 3). The issues raised with regard to "legal risks and benefits" goes well beyond the scope of this engagement. An analysis would require review of the CBA and other documents to determine the appropriate scope for either the Police Commissioners or a separate CPRB. Understanding the historical relationship of the Town and its police union would be a useful indicator of what "legal risks and benefits" might exist. I will say that the reform legislation was a

Steven G. Mednick

Attorney

the subpoena authority granted to Boards. That could be a very useful tool in the hands of a Police Commission, especially a board with clear disciplinary authority under a CBA and even one that does not. Establishing a Police Commission that broadly represents the population of a community could be an effective tool.

My recommendation is to modify the current language to the following effect:

“the Board of Police Commissioners may act as a Civilian Police Review Board with the authority to issue subpoenas, if so designated by Ordinance.”

Section	Proposed Revision
§2-231	To add to the Charter the purpose, membership and terms for the Fairfield Hills Authority.

Comment **Background:** C.G.S. §7-163d entitled “An Act Authorizing Municipalities to Establish Municipal Development Authorities” is the legal authority for the Fairfield Hills Authority. The statute applies to a town with a population between 25,000-30,000 occupying a total area of not less than 59 square miles and is the site of a correctional institution operation by the Department of Correction. By happenstance Newtown falls squarely within this provision of law. The statute permits the Town to establish an authority to oversee the development or redevelopment of a specified area or parcel that is located in and owned by the Town.

Conclusion¹⁰: Similar to our discussion of the CPRB in §2-160(a), state law permits the creation of an authority by adoption of an Ordinance. Again, my recommendation is to simplify the Charter provision to require the adoption and retention of such an authority in accordance with the ordinance that was authorized under C.G.S. §7-163d. You may lay out the broad purposes of the authority; but, I would leave the composition and structure of the Authority to the ordinance, in the event you may want to want to modify the scope, composition or any other provision pertaining to the authority.

response to an already litigious and risk-based system and environment which needs procedural and systemic review. Obviously there will be resistance by certain stakeholders which will be offset by those who seek reform. There will be a great deal of smoke and fiery rhetoric in the debate. The simple truth is this: the decision to adopt a CPRB and how far the Board should go is really a matter of local concern and should be debated in the context of the local culture, need and custom.

¹⁰ I hope this also addresses the issue raised by Councilmember Ryan Knapp (District 3).

Steven G. Mednick

Attorney

I don't know how to respond to the issue of whether the term "authority" may "mean something more than what they are and once it is in the Charter it is difficult to change" except to say that by mandating the adoption of the ordinance you are mandating the retention of the ordinance, although reserving the ability to change particular terms of the ordinance. Again, those changes need to be consistent with the statute. Whether there is a distinction between an "authority" or a "board" or "commission" is based not on what you call the entity but rather on the basis of what powers are delegate to the entity. Again, by retaining the Ordinance as the legal authority for the day-to-day operational scope and purposes of the Authority you retain greater control of the entity.

Section	Proposed Revision
§2-275(a)	Add "or a reduction in environmental impact" to the summary of the responsibilities of the Sustainable Energy Commission.

Comment No legal issues.

Section	Proposed Revision
§3-15(e)	To incorporate the provisions of Newtown Ordinance 124 into the Charter pertaining to the election of Board of Education members.

Comment Appears to be in sync with C.G.S. §9-414. However, the reference to the term "maximum number established in the town Charter" is not clear to me. Is this a reference to the statutory minority party representation standard or something else? It is not clear. I would be happy to look into this a little more thoroughly if authorized to do so¹¹.

Section	Proposed Revision
§4-05(c)(8)	Revise the language pertaining to the capital improvement plan to broaden the current language from a "five year" plan to a plan of "at least 5 years with annual adjustments to allow for fiscal flexibility." The provision also includes "annual" submission of the updated version to the Legislative Council no later than the fifteenth day of January each year

Comment There are no legal issues. However, there is some redundant language since capital plans are usually adjusted annually with the adoption of the current capital budget.

¹¹ I believe the issues raised by Councilmember Michelle Embree Ku (District 3) are illuminating; although the analysis may be beyond the scope of this engagement, since I would need to dig a little deeper on the facts. I would also need more information to address Councilmember Ryan Knapp's (District 3) general question about elections.

Steven G. Mednick

Attorney

Section	Proposed Revision
§5-10(a)	CRC states that this provision (which also eliminates the Board of Finance from the process) clarifies the regulation adoption process.

Comment No legal issue involved. It is not clear, from my reading, how it has changed other than the total elimination of the Board of Finance from the process and the elimination of the Board of Selectmen from financial regulations.

Section	Proposed Revision
§6-20	Preparation of the Proposed Town Budget by the Legislative Council

Comment There are no legal issues pertaining to the role of the legislative body in the budget process¹².

Section	Proposed Revision
§6-20(f)(1)	Prior to the Annual Town Budget Referendum, amendments shall be submitted to the Legislative Council. The Legislative Council shall vote on the amendments as if they were part of the proposed Board of Selectmen and Board of Education Budgets.

Comment This appears to treat the authority of the Legislative Council to reduce, increase or add funds to the proposed amendments as redundant and relies on the level of authority granted to the Legislative Council during the budget process.

Section	Proposed Revision
§6-20(f)(2)	Prior to subsequent budget referenda, <u>should the Board of Selectman or Board of Education make any amendments to budget proposals, then the Legislative Council shall not thereafter increase the size of any such amended budget proposal.</u>

Comment This language is intended to clarify that the Legislative Council may not increase the size of any budget amendment by the Board of Selectmen or Board of Education prior to any subsequent budget

¹² Councilmember Michelle Embree Ku (District 3) raised the question about whether "existing statutes (would) allow for the Legislative Council submission date to be earlier (to allow for more time to prepare the ballots and for voters to obtain and return absentee ballots)." To my knowledge there are no existing statutes which govern the municipal budget process. The local budget process is left to the Charter. Of course, municipalities are governed by some broad statutes regarding the commencement of the fiscal year and the impact of not completing a budget by that time and other regulatory and reporting requirements. There is also an ability to alter the budget schedule in a Charter by action of the legislative body.

Steven G. Mednick

Attorney

referenda (in lieu of the current "shall not be exceeded" language." Implicit is the authority of the Legislative Council to reduce such budget amendments¹³.

Section	Proposed Revision
§6-35(d)(1) ¹⁴	The Legislative Council shall have the power to approve, without referendum, Special Appropriations in an amount <i>not in excess of \$1,500,000 cumulative</i> during a fiscal year. <u>Said amount approved by the Legislative Council shall be cumulative as to the fiscal year.</u> The total ¹⁵ of Special Appropriations approved by the Legislative Council for all purposes during a fiscal year shall "not exceed an amount equal to one mil" on the most recently completed Grand List.

Comment¹⁶ No legal issue. Nevertheless, the provision is confusing. I originally thought there was redundancy based upon the underscored provision. It appears as a rhetorical affirmation of their view that the \$1.5 million cap is no longer a project cap but rather a cumulative cap. It didn't make sense to me until I spoke with the CRC Chair who informed me that the \$1.5 million cap is a definitive cap on Legislative Council action *free of referendum*.

In other words, once the \$1.5 million cap is reached all Special Appropriations approved by the LC, in any amount (\$25,000 or \$1 million), have to go to referendum up to the "one mil" cap.

As I understand the current scenario where the Special and Emergency Appropriations are combined a referendum would be required if an item "for any one purpose" exceeded \$1.5 million.

¹³ Councilmember Michelle Embree Ku District 3) raises a couple of questions in the context of the following ballot questions: "If the proposed sum of \$___ for the Board of _____ is not approved, should the revised budget be higher?" The answer would appear to be that while the Board of Selectmen or Board of Education may attempt to grapple with the notion of revising the budget "higher" this provision would appear to limit the Legislative Council's ability to do so.

¹⁴ In response to the issue raised by Councilmember Ryan Knapp (District 3), I don't believe the new language reduces the LC's special appropriation authority since it segregates emergency appropriations into a separate category.

¹⁵ Councilmember Michelle Embree Ku raises a good question on the juxtaposition of the terms cumulative" as pertains to \$1.5 million cap in the first sentence and the term "total of Special Appropriations used in connection with the "one mil" cap, in the third sentence.

¹⁶ In response to the question raised by Councilmember Michelle Embree Ku (District 3) I would respectfully suggest that these questions would be better asked of the CRC when they appear before your body. However, my read of this provision is that the Special and Emergency Appropriations are above and beyond the annual general fund and capital budgets. Accordingly, the caps established for these supplemental items would not apply to items included in the annual budget.

Steven G. Mednick
Attorney

However, if all other appropriations were for less than that cap, then all other appropriations would be freely permitted until the "one mil" cap is reached. Assuming most of the funds were for "Special Appropriations" rather than "emergency Appropriations" the legislative prerogatives currently enjoyed by the Council would be greater than under the proposed scenario, which places a hard cap on legislative action at \$1.5 million. While there is arguably, ore freedom of movement under the "Emergency Appropriation" scenario, it is my understanding that the amount permitted under the cap exceeds any recent experience in Newtown.

The LC needs to decide whether the proposed scenario makes sense. Based upon my cursory knowledge of the situation, it does seem to reduce the flexibility of Council action. On the other hand, if you support the approach, I would recommend language that would clarify the relationship of the two caps and the action that prompts a referendum¹⁷.

Section	Proposed Revision
§6-35(d)(2)	The Legislative Council shall have the power to approve, without referendum, Emergency Appropriations in a cumulative amount for the fiscal year not in excess of an amount equal to one mil on the most recently completed Grand List. <u>Said amount approved by the Legislative Council shall be cumulative as to the fiscal year.</u> Upon approval by the Legislative Council of Emergency Appropriations beyond said one mil, approval by referendum is required.
Comment	This section creates a separate category that is not included in the cap for Special Appropriations. Again, there appears to be redundant language which is underscored. It should be noted that <u>this provision does not grant authority for the First Selectman to respond to an emergency</u> , it is simply a provision that permits the

¹⁷ With respect to the first issue raised by Councilmember Michelle Embree Ku (District 3) with regard to "capital improvement projects" it would normally be my assumption that Special Appropriations go to matters in the general fund or operating side of the budget as opposed to the capital side. Moreover, Charter §6-35(a) clearly includes "capital project" within the definition of "Special Appropriation." *As such, it would appear that Special Appropriations for capital projects fall squarely within the purview of the two caps.* Her second question addresses the issue of the relationship between §8-05(e) and this section: "As provided in Subsection 6-35(e), if the real property proposed to be acquired requires an appropriation of \$1,500,000 or more, said **Acquisition** shall require approval of a referendum." It is not clear to me why there is a reference to the earlier provision since the issue seems to stand on its own; unless, of course, the property acquisition requires a Special Appropriation. Although, to be honest, §8-05(e) is a much clearer statement of the CRC's intent.

Steven G. Mednick
Attorney

First Selectman to request an Emergency Appropriation, without referendum, subject to the "one mil" cap. I urge you to consider adding language that would offer flexibility for emergency action by the First Selectman in the event of an emergency.

The emergency appropriations are not broken down by incident since the "one mil" cap is cumulative. \$3.8 million sounds like a reasonable figure for emergencies, even in the event of a series of emergencies.

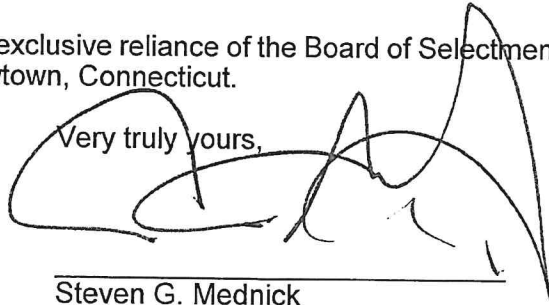
However, except for the vague language in §2-110(c) which grants the First Selectman the authority "to take such actions as are in the best interest of the Town," there is no provision in the Charter that explicitly permits the First Selectman to spend public funds in an emergency. In my view, a clear grant of authority would be useful.

Section	Proposed Revision
§6-35(d)(3)	Only dollars sourced from property tax revenue and charges for services revenue shall be counted as part of the caps and limits on Special and Emergency Appropriations.

Comment I am assuming this means that the First Selectman may have other sources of funds that may be utilized for emergencies, in keeping with the vague authority in §2-110(c) of the Charter.

The foregoing opinion is for the exclusive reliance of the Board of Selectmen and Legislative Council of the Town of Newtown, Connecticut.

Very truly yours,

A handwritten signature in black ink, appearing to be "Steven G. Mednick", written over a horizontal line.

Steven G. Mednick

SGM:oho