

To: Town Meeting Members
From: Town Government Study Committee
Re: Changes to the October 7 set of Special Act and Bylaws
Date: October 26, 2015

The document in this packet shows further changes to some of the bylaws resulting from feedback requesting further clarification. The changes are noted: added language is indicated by underlining and deleted language by strike-outs.

In this memo we wish to provide an explanation of the changes to the provisions in the Special Act and bylaws as they relate to Police and Fire (Special Act Section 3.b.2. and Articles 20, 22 and 23). We have worked with the Board of Selectmen on these changes. We also are providing some further information on the Planning and Land Management Division proposal.

Police and Fire

For towns which accept its provisions, Massachusetts General Laws (MGL) Chapter 41, Section 97A (Section 97A) provides that the Board of Selectmen shall establish the police department under the supervision of a police chief. This is known as the “strong police chief” provisions of the MGL¹. The Board also appoints and promotes other police officers and fixes their compensation, and has the authority to remove the chief or other officers for cause at any time following a hearing. The chief may make regulations related to the police department and officers subject to approval of the Board. The chief of police is in immediate control of town property used by the department and of the police officers, whom he assigns to their duties and who obey his orders. Acceptance of this section is made by a vote at an Annual Town Meeting. Wellesley accepted the terms of Section 97A in 1992.

At the time of acceptance of Section 97A, Wellesley had in its bylaws two provisions which provided that the Board of Selectmen had overall responsibility for the Police Department and the authority to establish policies and procedures governing the Police Department and the police officers (Town of Wellesley Bylaws, Sections 21.2.b and 21.2.c.²) When Section 97A was accepted by Town Meeting in 1992, its provisions superseded the terms of the two subsections of Bylaw Section 21.2 (referred to above and reprinted below), by granting this authority to the chief of police rather than the Board of Selectmen, but the subsections were never removed from the bylaws. During the process of the Town Government Study Committee’s (TGSC) work, Police Chief Cunningham brought this issue to TGSC’s attention. As Section 97A controls (a state law controls over a municipal bylaw), Town Counsel removed these subsections in the bylaw amendments to be presented to Special Town Meeting. The provisions of Section 97A pertaining to the Chief’s authority over his department are not affected by the TGSC’s recommendations.

¹ These provisions are currently in Wellesley Bylaws Section 21.1:

21.1. Establishment of the Department. *The Town shall have a Police Department established by the Selectmen. It shall act under the supervision of the Chief of Police.*

² The relevant sections of Article 21 (Police Department) of the Wellesley Bylaws read as follows:

21.2. Responsibilities of Selectmen. *The Selectmen shall:*

- a. appoint a Chief of Police and such police officers as they deem necessary;*
- b. have overall responsibility for the Police Department; and*
- c. establish suitable policies and procedures governing the Police Department and the police officers, including standards for record keeping.*

Bylaw Section 21.2.a. previously held that the Board of Selectmen would appoint the Chief of Police and any officers they deemed necessary. Section 22.2 contained parallel provisions with respect to the Fire Chief and the Fire Department. With the proposed creation of a Board of Selectmen-Town Manager form of government, the Town Manager will be vested with the authority to appoint all department heads, including the Chief of Police and the Fire Chief (Warrant Article 3.C; Bylaw section 20.3.b.) Bylaw Section 20.3.b (i) provides that appointments of the Police Chief and Fire Chief shall not take effect unless approved by the Board of Selectmen.

Bylaw Section 20.3.b. also vests authority in the Town Manager to appoint subordinate employees in all departments. After receiving feedback from Town boards and departments and extensive discussion, TGSC amended its initial language to provide that the Town Manager may delegate appointment authority of subordinates to the department head or chief staff employee within a department. However, due to the public safety and potential civil rights implications and significant responsibilities held by employees of the Police and Fire Departments, the Board of Selectmen and the Committee distinguished the appointment and promotion of police officers, firefighters, and other employees of the Police and Fire Departments by reserving this authority under the Town Manager.

Appointment of new police officers and promotions of officers already on the force were removed from the provisions of Civil Service by action of Town Meeting in 2010. At that time, Chief Cunningham recommended, and the Board of Selectmen adopted, a series of protocols which set forth specific provisions for hiring and promotion. The firefighters already on force were removed from the provisions of Civil Service by action of Special Town Meeting in 2011 and Fire Chief DeLorie recommended, and the Board of Selectmen adopted, a similar set of protocols for the Fire Department. Recognizing that the Police Chief and Fire Chief have made recommendations on appointments and promotions to the Board of Selectmen for many years, the Town Manager's authority to appoint or promote police officers, firefighters, or any other employees within the Police or Fire Departments will be limited to those individuals recommended by the Chiefs. The Board of Selectmen has approved the Special Act and bylaw amendments as they relate to the Police and Fire Chiefs and employees. Both Chief Cunningham and Chief DeLorie consent to these changes.

The proposed language of Bylaw Section 21.2.a. is as follows:

The Town Manager shall, in accordance with Section 20.3.b., appoint a Chief of Police. The Town Manager may appoint or promote such police officers and Police Department employees for whom funding has been provided; provided, however, that the Town Manager shall not appoint or promote any police officer or Police Department employee unless such police officer or Police Department employee has been recommended for appointment or promotion by the Chief of Police.³

³ Parallel provisions to 21.2.a. related to the Fire Chief's recommendation of appointment or promotion of firefighters, fire engineers or senior staff employees can be found in Bylaw section 22.2.a, and these sections have also been changed. Furthermore, Bylaw subsections 22.2.b and 22.2.c, which originally provided that the Board of Selectmen had authority over the Fire Department and could promulgate appropriate rules and regulations, were also removed.

Planning and Land Management Division

The revised motion to be made under Article 6 to establish the Planning and Land Management Division is found below and also in your packet of motions. We believe the proposed language addresses concerns that we have heard regarding the relationship between the Division Director and the boards included in the Division, and makes clear the fact that the action proposed in no way alters the authority or responsibilities of member boards.

The responsibilities of the Division Director are intentionally expressed in broad terms to make clear that the position is an administrative one that will evolve as the Director and staff work together to meet the needs and promote the goals of the Division. We have also added a provision requiring the development of an Implementation Plan, along the lines of the draft Implementation Plan attached to the revised motion, to identify steps to address the opportunities and needs identified in our review process.

Motion

That the Board of Selectmen shall be authorized to create a new administrative division, to be known as the "Planning and Land Management Division," and that the Town Manager or Executive Director of General Government Services shall appoint a Deputy Town Manager or Deputy Director of General Government Services to serve as the Director of said Division. The Division shall include staff members providing support to the Building Department, Planning Board, Zoning Board of Appeals, Natural Resources Commission, Wetlands Protection Committee, Design Review Board, Historical Commission, Historic District Commission, Neighborhood Conservation Districts, and the Wellesley Housing Development Corporation until such time as the Board of Selectmen (under the Executive Director form of government), after consultation with the affected boards, or the Town Manager (under a Board of Selectmen-Town Manager form of government), pursuant to Town Bylaw section 20.3.d.(ii), reorganizes said Division. The Boards referenced herein shall maintain all such autonomy and authority as is provided in applicable statutes and Town Bylaws.

The Director of the Division shall be responsible for preparing and managing the PLMD budget, which shall be comprised of departmental and board budgets; developing and executing an Implementation Plan for the Division; implementing the Town's Personnel Policies; managing the Division's daily operations; and developing communications and archive protocols.

Such Division is to be established within ninety (90) days after the dissolution of the Special Town Meeting. The Board of Selectmen shall report to the 2016 Annual Town Meeting on the creation of the Planning and Land Management Division.

Implementation Plan

The implementation steps noted below include both broad goals and more specific action items for the development of the administrative structure for the Planning and Land Management Division. The actual sequencing and prioritization of activities is best left to the Division Director, working with the boards and department heads, and in consultation with the Town Manager/Executive Director.

The following steps are presented in no particular order:

- Participate and work with the Planning Board and the Board of Selectmen in their efforts to update the Town's Comprehensive Plan and develop and implement the town-wide strategic plan;
- Develop consistent, effective protocols for communications within the Division, and for communication with Town departments, residents, and other constituencies;
- Continue frequent meetings, convened by the Division Director, to exchange information among departments within and outside the Division, and convene periodic meetings of Division boards as needed;
- Improve the quality and ease of access to information about the Division, its Departments, their initiatives, and the land-use processes, including the development and management of consistent, reliable and up-to-date information on the web site;
- Establish easy to understand checklists, FAQ's, flow charts, and other materials to explain the processes for land development and permitting; simplify applications to the extent permitted by statute or regulation, and make all forms available to be viewed and completed on the web site;
- Consider establishment of a single point of contact for all filings (e.g., permits, variances, etc.) and for questions on land use policies and procedures;
- Establish a working group that includes the IT Department to review alternative technology solutions that will facilitate the coordination of land use processes, and implement the best solution practicable (which may include access to a system by applicants to submit and track applications);
- Develop procedures for supporting and coordinating staff among the functional areas;
- Establish means to monitor enforcement and compliance with bylaws, regulations and permit conditions; and
- Develop plans with the Division Director, boards, staff, Town Manager, and Facilities Director to improve the office space for the Division.