



MINUTES
of the
COUNCIL of the WHOLE MEETING
TOWN OF SOUTHBRIDGE
November 16, 2022
7:00pm

CALL TO ORDER The Southbridge Town Council met on November 16, 2022, in the Council Chambers of the Southbridge Town Hall. Chair Daniel called the meeting to order at 7:10pm.

AGENDA ITEMS

#1. Pledge of Allegiance: Chairman Daniel led the recital of the Pledge of Allegiance.

#2. Roll Call: Councilors present: Adams, Daniel, Daou, Lazo, Marketti, Montigny, Rivas, and Steeves. Councilors excused: Ryan. Also Present: Michael McCall, Town Manager. Adriana HR Director name

#3: Review and Discuss Changes to the Town Charter

Chair Daniel summarized some of the changes that had been made after the document was reviewed by the Town Attorney. Changes that were suggested earlier were included in the draft reviewed by the attorneys.

Chapter 1: Incorporation; Short Title; Powers; Definitions

No changes.

Chapter 2: The Town Council

Section 2 Eligibility: Councilor Steeves suggested that, because it is difficult to get people to serve on boards/commissions Section 2-2-2, should be amended to include:

No Councilor shall hold any other paid town office during his/her term of office and may hold no more than one unpaid appointed seat on a board or commission.

He explained that in other communities Councilors serve on other committees, and this could create a liaison relationship with the Council with these groups.

Councilor Marketti said he would not support this since he feels he is already overstretched and adding this is too much. He also felt it could cause a conflict.

Councilor Montigny said they must always ask if a suggestion will be better for Southbridge or not. He added that although there is a problem filing board positions, with this change a Councilor could run for School Committee which could cause problems in the future.

Councilor Adams said there needs to be a separation of power, which this section currently does and that it should be left alone.

Councilor Lazo said the powers, duties and responsibility must be direct and bold on who does what. He advised against creating gray areas that could cause confusion.

Councilor Rivas expressed concern about being inclusive of different perspectives on boards and committees. She added that there has recently been an influx of diverse perspectives and ages. Making this change could discourage this progress.

Conclusion: No Changes to the language.

Section 3 Compensation: Councilor Steeves asked if it would be legal to for boards & commission members to receive a tax break for serving.

Councilor Adams said this has happened in other towns and perhaps this could be looked at. He suggested that if this were to be done none of the current Councilors should accept anything.

Councilor Rivas said perhaps a stipend might work for other boards to attract more participants and asked the Town Manager to look into it.

Councilor Montigny said there used to be a stipend.

Councilor Lazo said many citizens supported the past stipends for Council and School Committee because they felt it attracted a higher quality of participant. He outlined the past policy of stipends in town.

Councilor Daou said he does not support this because the on-call fire department fell apart when they started getting paid for responding. He feels residents should be active from love of community, not money.

Councilor Rivas said some people may not be able to afford to volunteer and said a small stipend for some people could spark more diverse participation.

Councilor Adams said it can incentives participation, and that the Town Council could establish a stipend without changing the charter.

Conclusion: No Changes to the language.

Section 4: General Powers & Duties: Councilor Montigny said he is concerned that local residents are not being given preference for Town jobs. He proposed that Section 2-4-6 be changed to add:

2-4-7 Town Council may, by a majority vote of 5, dictate the appointment or removal of any officer or employee under the jurisdiction of the Town Manager.

Councilor Lazo generally likes the suggestion but recommended that it require a vote of 2/3 for this to take effect. He believes there would need to be a manager that is out of control, or a sub-standard candidate for a position for this to be required.

Councilor Steeves said he thinks this could politicized jobs that are really not in the Council's purview. He said the whole point of the Town Manager's job is to make sure employees do their jobs, and Council already has authority over the Town Manager. The proposed change could create a dysfunctional situation where friends are given priority for jobs.

Councilor Rives said it would be in direct conflict with Section 2-4-5, and there is already a remedy if Council is not happy with the work of the Town Manager. She added that the suggestion politicizes appointments and opens a pathway to corruption.

Councilor Montigny said the goal is not to get friends into a job, but to give a local candidate preference. He responded to some of the issues outlined by other Councilors. He said he believes that the Town wants to see more local people hired, especially in the schools.

Councilor Daou said he feels like the Council's only role is to move money around and they have no power to do anything else. He expressed his concerns about department leaders not living in Town. He said the ones who do not live in Town are not part of the community and can leave without care for what is left behind. He wants the Council to be able to make these decisions for the residents because they were elected to do this.

Councilor Lazo said this is political because the Council is political body. He reviewed the history of the power of the Town Manager position. He said the suggested change to Section 2-4-7 is good because there are longtime open positions even though there are qualified candidates waiting. He added that the proposal shifts the power to hire from the Town Manager to the Council. He outlined more of his position on the proposal. He would support the proposal with 6 votes because Council, not the Town Manager, is the voice of the people.

A motion was made by Councilor Montigny to add Section 2-4-7 to Section 4 of the Town Charter: "The Town Council may by a vote of 6 dictate the appointment of any officer or employee under the jurisdiction of the Town Manager". Councilor Daou seconded.

There was a discussion of the vote required being worded as 2/3 or 6.

Councilor Rivas said there are checks & balances in the Charter where this could be accomplished without taking the place of the professionals who do these jobs. She outlined the reasons for her position on this issue. She feels the Council is treading into dangerous territory by taking over processes that Councilors are not qualified to make.

Councilor Marketti said he does not favor the change because it could cause poor morale, and the Council is the check & balance on the Town Manager.

Councilor Lazo said he thinks Council members are qualified to make decisions on personnel issues and responded to some of the comments from other Councilors.

Councilor Daou said he supports the current Town Manager, but in the past the person in that role was not effective and the Council could not do anything to help provide services to the public. He said the penalty for a non-resident in a department head job who is not effective is nothing, and that it's not fair for people who live in town. He said there are people who will volunteer for jobs, yet Southbridge will hire instead.

Councilor Steeves said he agrees that it's not fair that a local resident doesn't have preference, but he is not sure Councilor Montigny's proposal solves the problem. He suggested that perhaps they should reward the people who are participating and train them so they can do the job right. He added that Council members are legislators, not managers and that other legislative bodies do not have this kind of intrusiveness. He said that perhaps Councilor Montigny was really suggesting a return to a Town Meeting form of government.

Councilor Montigny thanked his fellow Councilors for their input and responded to some of their comments, especially pointing out that the motion is for appointment only – not for firing. He explained how he sees the change working.

Councilor Marketti pointed out that when Councilor Montigny first proposed the change (but before the motion) he did include removal.

Councilor Marketti moved the question, and Councilor Rivas seconded.

The motion to move the question failed with 3 in favor and 5 opposed (Councilors Montigny, Laz, Adams, Steeves, and Daou) .

Councilor Rivas pointed out that there are Search Committees and contracts that Councilors were involved in. She added that it's difficult to fire someone so it's important to do the hiring correctly and that process needs professionals. She explained that it is important to attract community members to work in Town, but that Councilor Montigny's proposal does not do that.

Councilor Lazo said he favors the change since it is just for hiring and would be used when the agenda stalls. He does not want to do the Town Manager's job, but he wants to ensure that the Town Manager knows that there is oversight. He further explained his position saying this proposal provides the accountability and oversight that they promise during elections.

Councilor Daou commented on the role of the Council writing and reviewing the Charter. He said the Town Manager hires from the recommendation of Department Heads. He is concerned that people want to hire their friends.

Councilor Lazo pointed out that he is talking about the position, not Town Manager Michael McCall and that the proposed change to the Charter will be voted on by residents. He suggested that it go on the ballot.

Councilor Adams said the Charter makes it clear what Council can and cannot do, and they pay the Town Manager to make the day-to-day decisions. It is the Council's responsibility to hold the Town Manager accountable, and he does not think the current Charter limits his powers. He addressed some of the comments from the other Councilors.

Councilor Adams pointed out that as Council of the Whole they cannot vote, and Councilor Montigny asked that a vote on the proposed Section 2-4-7 be added to the next agenda.

Conclusion: The wording change suggested by Councilor Montigny will be added to an upcoming agenda.

Section 5: Meetings & Quorum: No changes.

Section 6: By-Laws: No changes.

Section 7: Action Requiring a Bylaw: No changes.

Section 8: Filing Vacancies In the Town Council: No changes.

Section 9: Chairperson & Vice Chairperson: Councilor Montigny asked if language in 2-9-3 and 2-9-5 is needed since it seems unnecessary. Chair Daniel said this was recommended at a March meeting. There was a brief discussion of the purpose of this wording.

Conclusion: No Changes to the language.

Chapter 3: Other Elected town Boards & Officers

Section 1: General Provisions: No changes.

Section 2: Vacancies: No changes.

Section 3: Regional Vocational School Committee: No changes.

Section 4: Town Clerk: Councilor Adams said other Towns are now hiring, rather than electing, the Town Clerk and added that there have been some candidates in the past who were not qualified for the role who ran for the position. He thinks this change should be considered in the future.

Councilor Marketti pointed out that an elected Town Clerk must be a resident while a hired person could be from out of Town. Adams suggested that language could be added requiring a hired person be a resident.

Councilor Lazo said many elected positions have been replaced except the Clerk, and the Town Clerk role should stay elected, so an out-of-town Town Manager does have more power.

Conclusion: No Changes to the language.

Section 5: Housing Authority: no changes.

Section 6: Redevelopment Authority: no changes.

Section 7: Board of Assessors: no changes.

Section 8: Powers Duties & Compensation: no changes.

Chapter 4: Town Manager

Section 1: Appointment & Qualifications: no changes.

Section 2: Powers, Duties & Role: Councilor Steeves said 4-2-5 and 4-2-6 should be in the same paragraph because 4-2-6 refers to 4-2-5. He recommended eliminating the number 4-2-6 and make one paragraph under 4-2-5.

Councilor Montigny asked if there was any previous discussion of “4-2-6: The Town Council may by a majority vote of five Councilors waive this requirement but must revisit such a vote annually.” Other Councilors confirmed that this had been discussed.

Councilor Montigny added that the attorney suggested that transitional provisions for the residency changes need to be created and suggested adding “**applies only to said employees newly hired after July 1, 2023**” to 4-2-5 in order to grandfather in current employees. He added that Department Heads should also be included. He asked that this be added as an agenda item for the next meeting.

There was a discussion of which meeting to schedule voting on the changes proposed tonight, and it was decided to add them to the December 2, 2022 agenda.

Councilor Adams added that including Department Heads was discussed with the Department Heads, and the Council voted to not include them. There was a discussion of this issue, and it was decided to revisit the issue.

Councilor Rivas asked if 4-2-6 coincides with the evaluation of the Town Manager’s Contract. Councilor Steeves said the intention is to periodically revisit the vote that allows the Town Manager to not be resident.

Councilor Montigny outlined the wording that will grandfather the Town Manager.

Councilor Lazo said he served on a Council where all the Department Heads lived in town, and it was a very different experience and better organization and community.

Councilor Rivas asked if it someone grew up in Southbridge but no longer lived in Town would qualify. Councilor Lazo said it's a residency clause so they would have to live in Town. Councilor Rivas asked if the clause would be waived, and Chair Daniel said he believes it would be up to the Council at the time.

Councilor Montigny said the residency clause might be better geared to Department Heads with higher salaries. He is not in favor of waiving the clause but if it's in there he suggests that it require 6 votes.

Councilor Steeves suggested that "Upon the Fiscal Year after this Charter is approved" be used for grandfathering. There was a discussion of the timing and enactment of any changes.

There was a discussion of whether the Council and residents will vote on the entire Charter or on the separate Chapters of the Charter.

Councilor Rivas said that the wording in 4-2-4 "...shall have the power to appoint, on the basis of merit and fitness alone..." is a problem because there are other measures that should be used, such as cultural understanding, etc.

The intent and wording of this section was discussed, and there was no clear consensus on whether or not to remove the word alone.

Conclusions:

- **Eliminate the 4-2-6 to create one paragraph under 4-2-5**
- **Add "applies only to said employees newly hired upon the start of the Fiscal Year after this Charter is approved" or other transitional language to 4-2-5.**
- **Add a clause to waive the residency requirement if a candidate was raised in Southbridge, but no longer lives in Town. It should require a vote of 6.**
- **Residents will vote on the proposed changes by Section, rather than the full Charter.**

Section 3: Power to Appoint Town Boards & Commissions: no changes.

Section 4: Power to Rescind Appointments: no changes.

Section 5: Reorganization Plans by the Town Manager: no changes.

Section 6: Removal of the Manager: no changes.

Section 7: Acting Town Manager: Councilor Adams said that now that there is an Assistant Town Manager position that person should automatically become Acting Town Manager.

Councilor Lazo said it was previously decided that the Finance Director would automatically become the Acting Town Manager so that the financial aspects of the Town are cared for. He said if this Section is eliminated a Human Resources person will become the Acting Town Manager because of the structure of the HR Director/Assistant Town Manager position. He thinks these roles should be separate.

Councilor Steeves asked Mr. McCall what his thought process was to combine the HR/Assistant Town Manager role. Mr. McCall explained that he needed help in his office and an HR Director and combining them avoided hiring another employee to keep a Level Service Budget. He said if there is capacity in the budget to split the roles that would be preferable. Councilor Steeves asked if Mr. McCall thought the Finance Director or the HR Director should take the role of Assistant Town Manager. Mr. McCall suggested using the wording "the Finance Director or HR Director subject to Council approval" so there is flexibility to use the most appropriate person.

Councilor Adams agreed that there could be conflict with the HR Director serving as Acting Town Manager, and until the HR Director/Assistant Town Manager position is split into two roles that the succession be split.

Councilor Marketti said leave it as it is since Council has final say.

Councilor Rivas said she likes adding "or" so there is an option if needed.

Councilor Lazo suggested leaving it the way it is and to have the Council break up the position and hire an Assistant Town Manager as he does not like the combined HR Director/Assistant Town Manager position.

Councilor Montigny felt there is a big conflict of interest if the HR Director is the Acting Town Manager and supported splitting the roles and then make the change to Assistant Town Manager automatically being the Acting Town Manager. He does not support adding the wording splitting the succession.

Conclusion: Change paragraph 2 of Section 4-7-1 to ...pending the appointment of an Acting Town Manager, the Finance Person or HR Director shall perform the duties...

The meeting recessed at 9:00pm and reconvened at 9:10pm

Chapter 5 School Committee

Section 1 Composition: No changes.

Section 2: Powers and Duties: No changes.

Chapter 6 Department of Public Works

Section 1 Establishment: No changes.

Section 2 Powers and Duties of the Director: No changes.

Chapter 7 Town Attorney

Chapter 1 Appointment & Duties: Councilor Steeves pointed out that the role is sometimes referred to as Town Counsel and Town Attorney and suggested that Town Attorney be consistently used.

Conclusion: Use the term Town Attorney constantly throughout the Charter.

Chapter 8 Town Auditor

No changes.

Chapter 9 Licensing

Section 1 Liquor Licensing Board: No changes.

Section 2 Licensing Other than Liquor: No changes.

Chapter 10 Financial Provisions and Procedures

Section 1 Applicability of General Law: No changes.

Section 2 Contracts: No changes.

Section 3 Submission of Budget & Budget Message: No changes.

Section 4 Proposed Budget: No changes.

Section 5 Notice of Public Hearing on Proposed Budget: No changes.

Section 6 Adoption of the Budget: No changes.

Section 7: Capital Improvements Program: No changes.

Section 8 Notice of Public Hearing on Capital Programs: No changes.

Section 9 Supplemental Appropriations: No changes.

Section 10 Emergency Appropriations: No changes.

Section 11 Reduction or Restriction of Appropriations: No changes.

Section 12: Transfer of Appropriations: Councilor Montigny said he does not support the proposed change in 10-12-1. He understands the complaints about the small transfers and that the Council often has different opinions which causes longer meetings. This should be worked out as a Council rather than changing the Charter. He said he does not like the conflict between the Town Manager being able to reorganize the budget on July 1 and the Council being able to create a policy to override it. He said they should protect against future Councils and Town Managers who may not have the Town's best interest at heart and the existing Charter does this. He suggests either leaving the Charter the way it is or put a dollar amount restriction.

Councilor Lazo pointed out that 10-12-1 lays out the powers of the Town Manager, the Council, and the Finance Director and feels this controls how the money is handled.

Councilor Marketti agrees that it should be left the way it is, as the finances are one of the only powers the Council has, and the Town Manager should have to come to the Council for the transfers.

Councilor Steeves said by creating a clear policy the Council is not abdicating their fiscal responsibility and explained his view on this issue and the intentions of future Councils. He feels the suggested change clarifies that the Council has the right to transfer funds whether or not they choose to exercise that right.

Councilor Lazo thinks financial responsibility should be embossed in the Charter. He outlined some of the previous times that transferring money has been abused and that making the proposed change opens it to abuse.

Councilor Montigny said he thinks the existing policy is clear and the proposed change dilutes it and explained his thinking on this topic.

Councilor Marketti said he believes this change will add bureaucracy. He pointed out that 2-4-1 gives the Council "...all general, corporate, legislative, policy-making, and appropriation powers of the Town shall be vested in the Town Council." He feels this gives the Council appropriation powers and does not support the proposed changes.

Councilor Steeves said this does not remove the authority and that this issue came up because of a forklift purchase several years ago that was done with many small transfers. He said that is why this language was developed and approved at that time. Attached is the Transfer Policy 2018. There was a discussion of this issue.

Councilor Rivas asked for Mr. McCall's input on this section and how the change would impact day-to-day operations. Mr. McCall explained that there are checks and balances, but there has to be trust in the people responsible for the day-to-day and financial operations of the Town. He provided some examples of small issues that required involvement of the Council. He pointed out that contact between the Town Manager and Council is much better now, so the Council is more knowledgeable about and involved in what's happening. He said it would be more efficient for the Town Manager to approve small intra-department transfers.

Councilor Montigny outlined his concerns about giving the Town Manager more power and making this section less clear.

Councilor Marketti said policies could still be made without changing the section.

Councilor Lazo said he thinks this change will change nothing in day-to-day operations and explained why he holds this position. He believes the Council has proven that this section works and that it should not be changed.

Councilor Adams agreed that the Council has been extremely responsive when problems have arisen. He thinks the Town Manager should be allowed to transfer up to a certain amount, but they have already received a legal opinion that Council can set the policy so this can be put in place if the Council wants without changing the Charter. He does not want the section changed, but he will likely bring up a request to change the policy.

Councilor Marketti pointed out that a legal opinion can be obtained for anything.

Councilor Lazo said this change is not being proposed because of small transfers but because of problems with higher numbers. He thinks the Department Managers should be able to budget well enough to avoid the small transfers.

Conclusion: no changes should be made to the original Section 10-12-1 and disregard the submitted changes. Since this was never voted on, no vote is needed to keep the original wording.

Section 13 Limitation Effective Date: No changes.

Section 14 Lapse of Appropriations: No changes.

Section 15 Payments & Obligations: No changes.

Chapter 11 Nominations and Elections

Section 1 Town Elections: No changes.

Section 2 Eligibility of Town Voters: No changes.

Section 3 Filling of Vacancies in Elected Town Offices: No changes.

Section 4 Recall of Elected Officers: No changes.

Section 5: Election to be by Plurality Vote: No changes.

Chapter 12 General Provisions

Section 1 Initiative Petition and Referendum: No changes.

Section 2 Ineligible Measures: No changes.

Section 3 Initiative Petition: Councilor Marketti said he thought there was a previous problem with petitions having to be brought to the Council twice and requiring getting signatures twice. The change requires a second set of signatures, while the original does not need this.

Conclusion: This proposed change will be removed.

Section 4 Referendum: No changes.

Section 5 Charter Amendment & Bylaw Review: No changes.

Section 6 Severability: No changes.

Section 7: Specific Provisions to Prevail: No changes.

Section 8 Counting of Days: Councilor Steeves asked who specifies the counting of days (general law, charter, bylaw, etc.). Chair Daniel said the section indicates "Under the entire Charter". Councilor Steeves pointed out that the section ends with "unless otherwise specified" and asked who makes that specification.

Councilor Adams explained that a Town policy/bylaw can be more stringent than a State one, but the Town cannot reduce powers of what the State requirements.

Conclusion: Look into MGL in regard to this section.

Chapter 13 Transitional Provisions

Section 1 Continuation of Existing Laws: No changes.

Section 2 Disposition of Certain Special Acts: No changes.

Section 3 Continuation of Government & Administration: No changes.

Section 4 Transfer of Records and Property: No changes.

Section 5 Existing Officials and Employees: No changes.

Section 6 Effect on Obligations, Taxes, Etc.: No changes.

Section 7 Time of Taking Effect: No changes.

Chapter 14: Charter Commission Notes

No changes.

Chair Daniel said there are several changes to be addressed at an upcoming meeting, and there was a discussion of when to address these issues.

DISCUSSION OF NEXT MEETINGS

- Monday, November 21, 2022
- Monday, December 2, 2022

ADJOURNMENT

Motion: Councilor Lazo moved to adjourn the meeting of the Southbridge Town Council. Councilor Marketti seconded, and ***the motion passed unanimously by a show of hands vote.*** The meeting was adjourned at 10:03pm.

Respectfully submitted by,

Susan Peghiny
Recording Clerk

Attachment: Transfer Proposal 2018

STANDARD OPERATING PROCEDURE #
TOWN COUNCIL TRANSFER AND CAPITAL EXPENDITURE POLICIES
Adopted 4-23-2018

Purpose: This Southbridge Town Council acknowledges and understands its obligations to financial oversight as outlined in the Southbridge Home Rule Charter(SHRC 2-4-1,2). Town Council also acknowledges certain restrictions and requirements that the SHRC places on the transfer of unencumbered appropriated funds(SHRC 10-12-1)in regard to financial oversight, that might impede the necessary expediency of day to day operations in meeting departmental financial obligations. Therefore, without relinquishing any authority or duties provided within the SHRC, but rather in exercising the executive powers bestowed by the SHRC, this Southbridge Town Council puts forth the following Standard Operating Procedures regarding Intradepartmental/program funds transfers under \$5000.00, all transfers over \$5000, Interdepartmental funds transfers, and defines a Capital expenditure as follows:

- 1) **Intradepartmental/Program funds transfers under \$5000.00:** After the adoption of each new Fiscal budget, the Town Council shall vote to pre-approve all such intradepartmental/program funds transfers under \$5000, that may arise in the course of normal day to day operations, as deemed necessary and recommended by a department head and reviewed and approved by the Town Manager. Each individual Department head, in accordance with the Town Finance Director shall maintain a log of such transfers and provide at least a bi-monthly (every other) report of those transfers to the Town Council.
- 2) **Funds transfers of \$5000.00 and over:** Any transfer of such funds shall have prior approval of the Town Council. A department head may request such transfer to be discussed at the appropriate subcommittee then to Council or if time sensitive in nature, requested directly with the Council Chair to be added to the next Town Council agenda.
- 3) **Interdepartmental Funds Transfers:** All transfers between departments shall have prior Town Council approval.
- 4) **Capital Expenditure:** Any item or goods of \$10,000.00 or more, and with an intended, useful life of over 3 years, regardless of funding source.

All Capital Expenditures(CE) require prior approval by vote of Town Council. The relevant Department Head, through the Town Manager, shall obtain prior approval for a Capital Expenditure. Any changes, including reallocation of funds to approved Capital Expenditures shall require prior approval by Town Council regardless of funding sources.