



TOWN OF WILMINGTON

121 GLEN ROAD
WILMINGTON, MA 01887

THE OFFICE
OF TOWN CLERK

VOICE (978) 658-2030
FAX (978) 657-7564

June 22, 2021

Board of Selectmen
Town of Wilmington
121 Glen Road
Wilmington, MA 01887


Dear Sirs and Madam:

I write on behalf of the Bylaw Review Committee, which as you know has been charged with the task of overseeing the re-codification of the Inhabitant Bylaws of the Town of Wilmington. The company General Code has been hired to assist with this task, and they have completed their Editorial and Legal Analysis of our existing bylaws and of change recommendations made by this body in prior years. They have returned their report to the Committee for its consideration and we are endeavoring to meticulously attend to the same.

This task is daunting, but General Code's analysis makes the work of the Committee understandable and clear. However, because of the importance of the bylaws to our town, the Committee believes it would be beneficial to have the Board of Selectman aware from the very beginning of the work ahead, and to give them an opportunity to weigh in on the methodology that will be used before it begins the process of addressing the issues before them.

For that reason, the Committee would like to invite the Board to attend the Bylaw Review Committee meeting scheduled for Tuesday, July 13, 2021 at 4:30 p.m. in the Town Hall Auditorium. For your information, we plan to meet on the second and fourth Tuesday of July and August at 4:30 PM (location at the Town Hall TBD). We believe that time is of the essence in obtaining the Board's input, so please let me know if you have any questions and/or concerns.

Very truly yours,


Robert G. Peterson, Jr.
Chairman, Bylaw Review Committee



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Date: June 23, 2021

To: Board of Selectmen

Jeffrey Hull
Town Manager

From: Christine Touma-Conway
Town Clerk

Subject: Board of Selectmen Vacancy – Special Election

The purpose of this memorandum is to provide insight on how to deal with the vacancy on the Board of Selectmen created by the resignation of Jomarie O’Mahony which was effective on June 14, 2021.

SPECIAL ELECTION

Section 3 of the Town Manager Act provides as follows:

SECTION 3. Election of Selectmen. At the first town election following acceptance of this act, there shall be elected two selectmen for three years, two selectmen for two years, and one selectman for one year. Upon the qualification of the selectmen so elected, the term of office of the Board of Selectmen then existing shall terminate. At each annual town election thereafter, the voters shall elect selectmen for the three-year terms to replace those whose terms are about to expire. When a vacancy occurs among the selectmen by reason of death, resignation, change of residence from the town, or other disability, the remaining selectmen shall order a special election to be held not less than 65 days and not more than 90 days following the notification of the vacancy at which the voters shall elect a selectmen for the remainder of the unexpired term.

By my computation, the 65th day, *i.e.* the earliest day a Special Election can be held to fill this vacancy, is August 18, 2021, and the 90th day, the last day of the Special Election window, is September 12, 2021. We have been advised by Town Counsel that despite the use of the word “shall” in the above section, case law has determined that such language does not mandate that the Board

order a special election to fill the vacancy on the Board. This advice also extends to the 65-90-day period outlined in the section, that it too may be treated as directory and not mandatory.

If the Board nonetheless does choose to fill the vacancy by special election, and to act within the 65-90 period, there are certain other statutory deadlines which are mandatory and must be considered in addition to the timeline set forth in Section 3 of the Town Managers Act. G.L. c. 41, §10 addresses the process for calling of a special election:

No election shall be held for any office pursuant to this section unless the selectmen file with the town clerk notice of an election for such office not less than fifteen days before the last day to submit nomination papers to the registrars of voters for certification, before the election or any preceding primary, caucus, or preliminary election.

This provision starts a timeline which, considered within the 65-90 day period set forth in Section 3 of the Town Manager Act, means that if the Board were to call a special election to fill the vacancy and file a notice to that effect electronically with the Office of Town Clerk on June 28, then the earliest date nomination papers could be due for that election would be 15 days hence: July 13, 2021, which would mean that the earliest possible date for the special election would be Tuesday, August 31, 2021.

We have been in contact with the School Department regarding the timing of this election. School staff at those schools are due back on August 30 and have scheduled workshops that day and August 31, Parent Orientation is scheduled for September 1, all in the very space we would hold our elections.

As the manager of the office responsible for administering this election, if it is the will of the Board to schedule a special election, I would respectfully ask that the Board schedule it on **Thursday, September 2, 2021**. This would enable us to avoid previously scheduled vacation time, the Labor Day weekend, the opening of the Wildwood and Boutwell schools to their students (though the staffs of both schools will have begun their year by then), and to avoid having the election on a Saturday and incurring overtime costs for staff of multiple departments.

I would also respectfully ask that the Board consider a shorter election day. I make this request for several reasons: in the interest of saving money on running an election for which we did not budget; the Inhabitant Bylaws are silent with respect to specific polling hours for special elections; I anticipate very low turnout, as it is the Thursday before Labor Day weekend when many families are on vacation; and finally, we are still able to offer Early Voting by Mail, and plan to do so, which would help defray any inconvenience of a shorter voting day. If the Board is amenable to this recommendation, I would suggest pushing up the start time to 7:00 a.m. and closing the polls at 5:00 or 6:00 p.m.

Nomination papers would be made available immediately upon the scheduling of the election. All other dates within an election calendar are driven by statute. Below is the calendar that would be applicable for the proposed election date:

EVENT

Last Day to Take Out Nomination Papers

Monday, July 12 2021 5:00 p.m.

Last Day to Submit Papers

Thursday, July 15, 2021 5:00 p.m.

Last Day to File Objections/Withdrawals	Monday, August 2, 2021 5:00 p.m.
Last Day to Register to Vote	Friday, August 13, 2021 8:00 p.m.
Pre-Election Campaign Finance Reports Due/ Last Day to Post Warrant	Thursday, August 26, 2021 4:30 p.m.
Special Election	Thursday, September 2, 2021 (time TBD)
Post-Election Campaign Finance Reports Due	Monday, October 4, 2021 4:30 p.m.

OTHER OPTIONS

The impact of the advice of Town Counsel relative to the “directory” rather than “mandatory” nature of the provisions of the Section 3 of the Town Manager’s Act is to provide the Board with the option of filling the vacancy by special election, and if that is the will of the Board, to do so on a timeline that is convenient rather than shoe-horned into the 65-90 day period provided, given the restrictions we face with the availability of the school buildings during a busy time of a year in which staff and students are returning to the post-COVID “new normal.” Thus, the Board could choose to hold a special election after the 90th day from the resignation, September 12, 2021. If this were to happen, it is likely that the special election would have to be held on a Saturday, given that students will be in the building in that later timeframe.

Also, it would appear that in addition to calling for a Special Election to fill the vacant seat, the Board might decide to allow the seat to remain vacant until the next scheduled Annual Town Election. There is some precedent for this option, given the most recent Board vacancy prior to the instant one.

At the Board of Selectmen’s January 28, 2019 meeting, Selectman Edward P. Loud, Sr. announced that he would be resigning his position on the Board effective after that body’s February 11, 2019 meeting. The Annual Town Election, scheduled on April 27, 2019, fell between the 65th and 90th day after that resignation, and the vacant position was placed on the Annual Town Election ballot showing a term expiration in accordance with Mr. Loud’s original term. As this was before my tenure as Town Clerk, I am uncertain what factored into this decision. However unclear it might be whether this decision was made by the Board because of the timing of the Annual Election, it certainly seems that was the prudent way to handle it.

With respect to this potential option, Town Counsel has advised that the Board has discretionary authority, and may determine, based upon the expense of holding a special election, the concern with a summer election when voters are on vacation, and the difficulty of proceeding at this time, filling this vacancy at the Annual Town Election is in the Town’s best interest. This has been described as a policy determination to be made by the Board with respect to the extent to which it will seek compliance to the extent possible with the Town Manager Act.

Please feel free to contact me with any questions or with requests for further information.



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

June 25, 2021

TO: Board of Selectmen

RE: American Recovery Plan Act

As you may recall, Wilmington is slated to receive \$7,007,871 in funds from the federal American Recovery Plan Act. The portion of this program directed to municipalities is referred to as the Coronavirus State and Local Fiscal Recovery Fund. Communities are currently able to seek 50% of their portion of the entitlement or non-entitlement funds by or before June 30, 2021. Wilmington's non-entitlement portion is \$2,453,954. Application for 50% of those funds (\$1,226,977) has been submitted. The Town can submit an application for the balance of funds in twelve months. Guidance has not yet been provided by the state for the application for the remaining so called non-functional county redistribution amount of \$4,553,916. Discussions are ongoing to develop a plan for use of these monies. Topics being considered include upgrades to the water and stormwater management infrastructure and Health Department related support in the event of a COVID resurgence. A proposed plan will be presented to the Board of Selectmen and Finance Committee for review and comment.


Jeffrey M. Hull
Town Manager

cc: Kerry Colburn-Dion, Assistant Town Manager/Human Resources Director
Bryan Perry, Finance Director/Town Accountant