



*The Leader in Public Sector Law*

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***By Electronic Mail***

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To: Christopher Roy, General Manager, Belmont Municipal Light Department

From: Christopher Pollart and Karla Doukas

Re: Process to Establish an Elected or Appointed Municipal Light Board

Date: May 28, 2020

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### **INTRODUCTION**

On behalf of the Belmont Municipal Light Department (“BMLD”), you have asked us to discuss the process for establishing an elected or appointed municipal light board. Currently, the Belmont Board of Selectmen serves as the Municipal Light Board. It is our understanding that the Town of Belmont (“Town”) has not adopted a charter establishing a governance structure or a process for making changes to its governance structure. Accordingly, based on our research, the Town may establish a separate Municipal Light Board via a Town Meeting vote and elect new members at the annual election at least 60 days following the Town Meeting vote. A separate vote on the ballot would be required to make municipal board members appointed positions. Although the Town may also effect these changes through a local Home Rule charter or special legislation, the Town Meeting process authorized by statute would be the most efficient. We have discussed this matter in more detail below.

### **DISCUSSION**

Pursuant to G.L. c. 164, town-located municipal light plants may be governed either by its Board of Selectmen or a three or five member municipal light board. *See, e.g.*, G.L. c. 164, § 55, § 56. Section 55 provides:

A town which has established or votes to establish a gas or electric plant may elect a municipal light board consisting of either three or five citizens of the town, each for a term of three years. Of the three-member board, initially one shall be chosen for one year, one for two years, and one for three years, and at each annual meeting thereafter one for a term of three years. Of the five-member board, initially one shall be chosen for one year, two for two years and two for three years and thereafter, the terms shall be for three years. The municipal light board

shall have authority to construct, purchase or lease a gas or electric plant in accordance with the vote of the town and to maintain and operate the same.

(Emphasis added). The Town has not established a separate municipal light board and instead, its Board of Selectmen serves in that capacity. In general, towns have three options to make changes to its governance structure: (1) adoption of a charter through the local Home Rule process; (2) obtaining special legislation; and (3) using permissive legislation to enact changes. It is our understanding that the Town has not adopted a charter that establishes the Board of Selectmen as the municipal light board or the manner of changing the duties of town boards and officials. Accordingly, we are assuming the Board of Selectmen serves as the Municipal Light Board pursuant to G.L. c. 41, § 21. That statute provides in pertinent part:

**By vote of a town meeting** called for the purpose in any town at least sixty days before an annual meeting, or upon request by petition of ten per cent of the qualified voters of any town filed with the selectmen thereof at least sixty days before an annual town meeting, asking that the selectmen act as a water and sewer board, water commissioners, water and **municipal light commissioners,** **municipal light board,** sewer commissioners, park commissioners, board of public works, board of health, assessors, or commission of public safety, or perform the duties of such boards or officers or any of them or that cemetery commissioners, assessors, a superintendent of streets, a chief of the police and fire departments or board of health be thereafter appointed by the selectmen, the selectmen of such town shall include in the warrant for such annual meeting for submission to the voters such question or questions in the following form, to be placed on the official ballot in towns using such ballot....

G.L. c. 41, § 21(emphasis added).

To change the Board of Selectmen’s duties as light board members, Town Meeting would need to take another vote pursuant to G.L. c. 41, § 23 and if Town Meeting approves the establishment of a separate elected Municipal Light Board, the new members would be elected at the next election. In particular, G.L. c. 41, § 23 states:

A **town may**, after a vote under section twenty-one has been in effect therein for a period of not less than three years, **by a vote at a meeting** held at least sixty days before the annual town election, **rescind such action in whole** or in part and thereupon such town shall, at the next town election, **nominate and elect such officers as are necessary to carry out the duties** exercised in accordance with section twenty-one by the board of selectmen or officers appointed by them. Such officers, when to be elected for three year terms, if members of a board of three or more, shall be nominated and elected for one, two or three years respectively, and thereafter for the term of three years, and upon their election and qualification shall have all the duties and obligations imposed upon them by law.

(Emphasis added). In sum, the steps to establish a separate elected municipal light board are:

- (1) Majority vote of Town Meeting to rescind the original vote authorizing the Board of Selectmen to serve as the Municipal Light Board and to create a separate municipal light board in accordance with G.L. c. 164, § 55, and
- (2) Elect the members at the next election following the Town vote.

If the Town seeks to create an appointed, rather than elected municipal light board, another Town Meeting vote would be required. Although G.L. c. 164, § 55 authorizes an elected municipal light board, G.L. c. 41, § 1B allows most board positions to become appointed positions upon a majority vote of Town Meeting and acceptance by the voters at the annual town election. That statute provides:

**Any office or board**, except the board of selectmen and the school committee, elected under the provisions of section 1 **may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections**; provided, however, that any vote by a special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. For purposes of this section, the positions of town treasurer and collector of taxes, elected pursuant to section 1, may be combined into 1 position and become an appointed position in the manner provided in this section....

G.L. c. 41, § 1B (emphasis added). Acceptance by the voters requires the ballot question be in the following form:

Shall the town vote to have its elected (Title(s) of office or board) become an appointed (Title(s) of office or board) of the town?  
Yes \_\_\_ No \_\_\_

If a majority of the voters approve, the board of selectmen would appoint the new board members for three year terms, although five-year terms would be permitted under G.L. c. 164, § 55.

A separate municipal light board, either elected or appointed, also may be established by adopting a charter following the local Home Rule process pursuant to G.L. c. 43B or obtaining special legislation from the State Legislature. The statutory process, however, appears to be the most efficient. The adoption of a charter requires, among other things, multiple Town votes and the election of, and hearings before a charter commission. G.L. c. 43B, §§ 4, 11. Special Legislation requires a Home Rule petition approved by the local legislative body,<sup>1</sup> which will proceed through the normal legislative process.

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<sup>1</sup> Section 8(1) of the Home Rule Amendment provides that the Legislature may enact special laws relating only to a single city or town “on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town.”

Template Town Meeting and town election language:

**Town Meeting Vote**

To see if the Town will vote pursuant to M.G.L. c. 41, § 23 to rescind any prior vote authorizing the Board of Selectmen to perform the duties of the Municipal Light Board and to establish a separate [three-member] [five-member] Municipal Light Board for such terms as set forth in M.G.L. c. 164, § 55; said Municipal Light Board members shall be elected by the voters at the next annual town election [or appointed by the Board of Selectmen upon acceptance of M.G.L. c. 41, § 1B by the voters at the next annual town election].

Note: Delete the bracketed language that will not apply. The election must take place at least 60 days after the Town Meeting vote. If the Town wishes to have the Board members appointed, a separate vote will need to be taken at the next election or any subsequent election. Upon approval of Town Meeting to establish a separate Municipal Light Board, candidates necessarily will pursue election to those positions since it will be unknown whether the Town will vote to establish the positions as appointed positions. If a vote to accept M.G.L. c. 41, § 1B to establish Municipal Light Board members as appointed positions passes, such vote necessarily will defeat the election. To avoid this situation, the Town may wish to consider pursuing an elected Municipal Light Board then taking a vote under M.G.L. c. 41, § 1B at a later election to convert the Municipal Light Board positions from elected positions to appointed positions.

**Annual Town Election Vote – Appointed Positions**

Shall the Town vote to have its elected Municipal Light Board become an appointed board of the Town?

Yes \_\_\_ No \_\_\_

Note: If the voters accept M.G.L. c. 41, § 1B, the Board of Selectmen will appoint the members to the Municipal Light Board for such terms as set forth in M.G.L. c. 164, § 55.

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If you have any questions, please contact us.