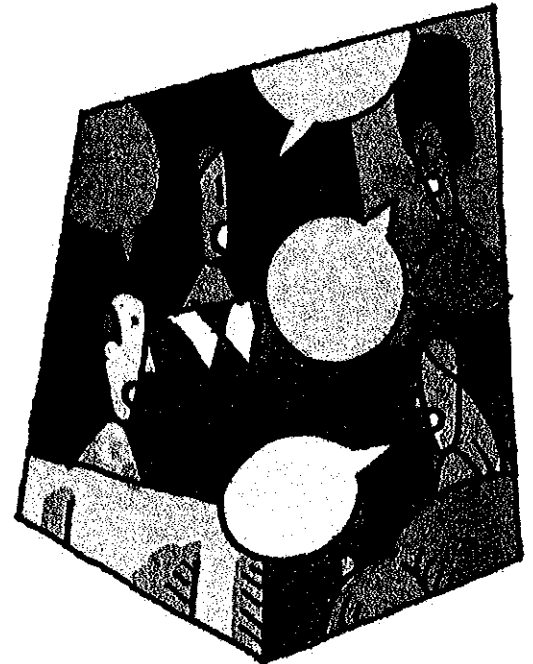
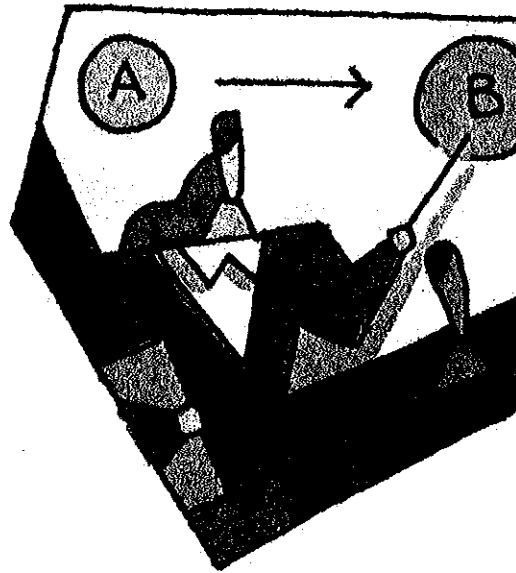
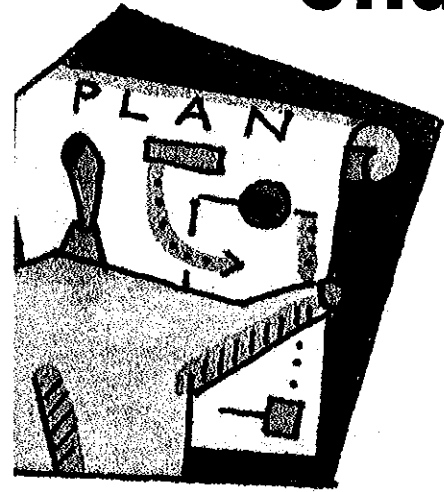


SEVERAL OPTIONS EXIST FOR

# Changing Local Government Structure



BY MARILYN CONTREAS

**W**hat prompts a community to examine its local government structure? There can be as many reasons as there are cities and towns, but some of the catalysts might include the following:

- Retirement of key personnel
- An inability to attract candidates to serve in either elected or appointive office
- A perception that municipal departments are not communicating or coordinating functions as they should
- An increase in population and the resultant increase in service demands
- Poor town meeting attendance
- A need for greater oversight of financial matters and service delivery

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A board of selectmen may appoint an ad hoc committee (e.g., a "town government study committee"), or the mandate may come from town meeting, with the moderator appointing such a committee. These examinations may be specific ("Do we need a town administrator?" "What are the pros and cons of establishing a consolidated finance department?") or more general ("examine town government structure and make recommendations"). Whatever the catalyst, and whatever the scope of the examination, local officials will need to know the parameters for local government structural change.

Massachusetts state law provides the following routes for cities and towns to make changes in the organizational structure of local government:

- Using bylaws and "permissive" legislation to enact structural change
- Election of a charter commission and subsequent adoption of the commission's proposed charter
- A petition for enactment of special municipal legislation

These vehicles can be used for a variety of structural changes, including but not limited to:

- Changing an office from elected to appointed status
- Consolidating like functions (e.g., public works, finance) in a single department
- Establishing the position of town administrator

Some structural changes can be accomplished *only* by a home rule charter or special act charter, such as:

- Changing the size, composition or term of the legislative body
- Changing the term of the chief executive
- Authorizing town meeting to make certain future structural changes by bylaw, ordinance or adoption of an administrative code
- Assigning certain powers and duties to the town manager or administrator

## Bylaws and Permissive Legislation

Towns may accomplish some structural, administrative and organizational changes through adoption of enabling legislation and implementing bylaws. Enabling or

"permissive" legislation gives communities the authority to adopt a state law in order to accomplish a structural change; it is optional, in that communities determine when and if the law is responsive to their plans for structural change.

Chapter 41, Section 1B (enacted in 1997), allows a vote of town meeting followed by a ballot vote at the annual town meeting/election to change certain elected positions to appointments of the board of selectmen (applies to clerk, treasurer, tax collector, assessors, auditor, highway

## In a Nutshell: Routes for Changing Local Government

### Bylaws and "Permissive" Legislation

- Can be used to change certain elected positions or boards to appointed; allow selectmen to act as certain offices; or create position of town administrator
- Changes require town meeting or town election vote

### Home Rule Charter

- Elected charter commission prepares new charter
- Charter defines structure of local government
- New charter generally proposes significant changes to structure, such as creation of town manager or administrator position, changing boards or commissions, or consolidating or creating departments
- Requires approval at annual town election

### Special Municipal Legislation

- Town submits proposed structural change to Legislature
- Requires legislative approval
- Can be used to create town manager or administrator position

surveyor, sewer commissioners, road commissioners, tree warden, constables, and boards of health). Elected officials in office at the time of such vote would complete their terms before the appointment provisions took effect. (Section 1B does not apply to boards of selectmen or school committees, which must remain elected.)

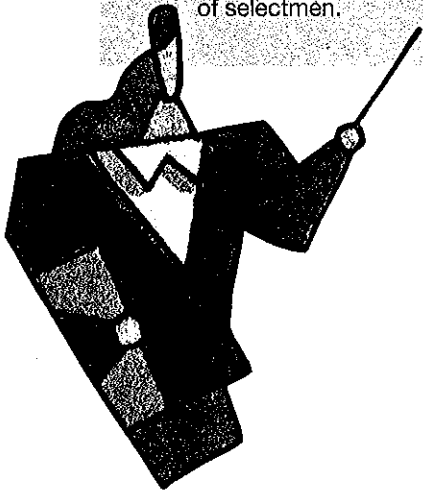
Chapter 41, Section 21, allows selectmen to act as certain offices (water and sewer board, water commission, water and municipal light commissioners, municipal light board, sewer commissioners, park commissioners, board of public works, board of health, board of assessors, commission on public safety).

*continued on page 24*



## Interesting Local Government Facts

- Norwood was the first town to secure passage of a special act that included a town management position ("general manager")
- Andover is the largest town with an open town meeting.
- Framingham is the largest town with a representative town meeting.
- The largest town meeting membership is in Fairhaven; the smallest is in Saugus.
- Three towns have replaced representative town meeting by returning to open town meeting: Seekonk, Athol and Webster.
- Wakefield is the only town with a seven-member board of selectmen.



For Chapter 41, sections 1B and 21, questions that would authorize the board of selectmen to appoint particular offices or multiple-member bodies must be placed on the ballot at an annual election. Questions may be placed on the ballot by a vote of a town meeting held at least sixty days before the annual town meeting. Questions authorizing selectmen to act as certain boards, under Section 21, may be placed on the ballot upon petition by ten percent of qualified voters, with the petition being filed with selectmen at least sixty days before the annual town meeting.

Town officials may be interested in looking at these options if individuals in these positions are retiring and no one is interested in seeking such an elective office, but would be willing to serve in an appointed capacity. If the town is growing or functions are expanding, but the town does not yet see a need to create new boards and commissions, the "act as" provisions can provide some direction until the town is ready to create the individual boards. Towns should consider that such arrangements may need to be interim in nature, given the responsibilities and regulatory enforcement duties of some of these boards (e.g., board of health, water and sewer board). Town officials are always advised to review options with municipal counsel prior to proceeding.

Selectmen also may be granted the authority to appoint cemetery commissioners, police and fire chiefs, assessors, superintendents of streets, or boards of health. Communities may want to use this option if no one is seeking elective office, but the town wishes to retain these offices as separate entities. This option also requires a town meeting vote.

Other enabling or "permissive" options include:

- Establishing the position of town administrator (Ch. 41, Sect. 23A): For several decades, this was the most popular route for establishing administrative positions. (Referenced in the statute as "executive secretary" when first enacted in 1956; it was amended in 1996 to insert the term "town administrator," a more common title within the profession.) The statute allows the board of selectmen to delegate certain duties of the board to a town administrator. Use of this option is

now seen most often in communities that have not undertaken any major actions—such as a home rule or special act charter—to centralize local government, and where there are more elected offices for administrative positions such as treasurer, collector and clerk.

- Appointment of assessors by the selectmen (Ch. 41, Sect. 25)
- Combining the positions of treasurer and collector (Ch. 41, Sect. 1). The town may vote to authorize the treasurer to act as collector.
- Appointing town clerk as town accountant, if he or she holds no other office involving the disbursement or receipt of funds (Ch. 41, Sect. 55)

For larger, more multi-faceted operations, towns may want to examine the following options:

- Chapter 40N allows the establishment of a water and sewer commission as a body corporate and politic.
- Chapter 43C provides a procedure for creating three consolidated departments: finance, community development and inspections. Chapter 43C defines the features of bylaws establishing these departments. The town of Hanover and the city of Chelsea are among the communities that have used Chapter 43C to accomplish department consolidation.

## Home Rule Charter

Communities seeking to make more comprehensive changes in the local government charter may elect a charter commission of nine persons to prepare a home rule charter for the voters' consideration. The option of preparing a home rule charter became available in 1966 with the adoption of the Home Rule Amendment in the Massachusetts Constitution. Massachusetts does not prescribe the form of government based on a community's population, tax base or other category. The modest parameters established by the state's constitution initially in 1821, and modified to include the limited town meeting option in 1920, are as follows:

- Towns above 12,000 population may adopt a city form of government
- Towns above 6,000 population may adopt a limited (representative) town meeting form of government
- Towns below 6,000 population must operate with an open town meeting

Further, there are several statutes referencing "town manager" or "town administrator," but no statutory definition of these terms. The position is usually defined by the home rule or special act charter creating or revising the position, or in general terms in a town bylaw if a town administrator is adopted pursuant to Chapter 41, Section 23A.

Historically, the Legislature demonstrated greater interest and concern in how cities were governed, providing four plans of government that could be adopted by cities in 1915. Colloquially, these plans are known as Strong Mayor, Weak Mayor, Commission, and Council-Manager (Plans A, B, C, and D). Plan E, a council-manager variation with voting by proportional representation, was added to the statute in 1938. Plan F, allowing for the partisan (party identification) election of a mayor and council, was added in 1959. After passage of the Home Rule Amendment in 1966, the Legislature decided that the provisions of Chapter 43 for adopting these plans could no longer be used. Thus, there are now no "model" plans for either city or town government.

More than 130 home rule charter commissions have been elected since the adoption of the Home Rule Amendment in 1966. The procedures for creation of a charter commission are outlined in Chapter 43B of the Massachusetts General Laws. In summary, any city or town, upon petition of fifteen percent of the registered voters, may vote to elect a nine-member charter commission to prepare a charter. A charter serves as the basic framework of the government structure, identifying officials to be elected and appointed, the size, term and composition of the legislative body, appointment authority, operating and capital budget preparation, and organization of departments. Many communities with home rule charters have put their charters on the city or town Web site, where they are easily accessible.

A charter commission has a maximum of eighteen months to prepare a proposed charter, but may choose to complete the task in ten months. Following its election, a commission considers the options for changing local government structure and seeks participation from residents via public meetings, hearings, publication of a preliminary report, and issuance of a

final report. The requirements for public participation are described in Chapter 43B. To take effect, a charter proposal must be adopted by a majority of voters at a municipal election.

<b>Home Rule Charters</b>			
<b>Adopted With Representative Town Meeting:</b>	<b>Adopted With Open Town Meeting:</b>	Lunenburg	Provincetown
Auburn	Acton	Lynnfield	Rockland
Billerica	Acushnet	Mansfield	Salisbury
Chelmsford	Ashland	Marshfield	Scituate
Dedham	Athol	Mashpee	Seekonk
Dartmouth	Bedford	Maynard	Stow
Falmouth	Bellingham	Medfield	Sturbridge
Natick	Blackstone	Middleton	Sutton
Reading	Bourne	Millbury	Townsend
Stoughton	Chatham	Millis	Truro
Walpole	Dracut	Nahant	Uxbridge
Winchester	Eastham	North Andover	Wakefield
	Easton	Northborough	Wareham
	Grafton	Northbridge	Webster
	Harwich	North Reading	Wellfleet
	Hudson	Norton	Westborough
	Longmeadow	Norwell	Westwood
		Orleans	Winchendon
		Oxford	

*Note: Charters for Mills and Rockland did not originally contain provisions for a management position.*

In towns, some charter commissions follow a ten-month schedule and present a charter proposal to the voters at the annual election one year following the commission's election. If the commission chooses to follow the eighteen-month schedule provided in the law, the charter proposal would be presented to the voters at the municipal election two years following the election of a commission. (This approach responds to cities with biennial elections.)

The election of a commission, the preparation of a charter, and the submission of a proposal to the voters is a major undertaking. Most towns proposing home rule charters include one or more significant changes in their structure, including but not limited to:

- Creation of a general management position (town administrator, town manager, etc.)

*continued on page 26*



- Changing elected boards, commissions and officials to appointed status
- Establishing or consolidating local departments (including enabling provisions to allow organizational changes via bylaw or ordinance adoption as circumstances require)
- Establishing procedures for preparation of the operating budget and capital plan
- Providing "citizen safeguard" measures such as initiative, referendum and recall

The Department of Housing and Community Development is available to provide technical assistance to charter commissions. The department serves as a repository for all proposed home rule charters and prepares several publications to guide commissions in the charter preparation process. Department staff have also participated in meetings and workshops on this topic throughout the state.

## Special Municipal Legislation

Prior to the adoption of the Home Rule Amendment in 1966, the most comprehensive changes in local government were made by means of a petition for special legislation (a "special act charter"). This option remains available today and has been used in approximately forty communities. (See list, below.) Another eleven have secured passage of special acts to create the position of town manager or town administrator.

The following is the procedure governing special act adoption:

1. Passage, by majority vote at town meeting, of a warrant article or resolution proposing the special legislation
2. Petition to the Legislature to enact the proposed legislation
3. Hearing by assigned committee of the Legislature
4. Approval of the petition by House of Representatives and Senate
5. Signing of special legislation by the governor

This process may be completed in as little as one year. In some instances, the petition may require that the act become effective only upon acceptance by a majority of voters at the next regular municipal election (sometimes referred to as ratification). In other instances, the act may contain a certain date when the provisions take effect, or the act may state that its provisions become effective upon passage.

Communities can also use the special act route to make more discrete changes (e.g., combining the positions of an appointed collector and treasurer, changing an elected board or commission to an appointed one, creating a consolidated department, or adopting recall provisions).

The Legislature's Web site ([www.mass.gov/legis](http://www.mass.gov/legis)) includes the manual for preparing proposed legislation and provides specific guidance regarding the submission of "home rule petitions" (special municipal legislation).

Any procedural option for structural change under consideration should be reviewed by municipal counsel prior to proceeding. Municipalities may be guided by the Home Rule Amendment, which defines changes in the legislative body, chief executive or town manager as requiring adoption or revision of a home rule charter or enactment of special legislation. ❁

## Towns that Used Special Act Charters to Create Town Manager or Administrator Position

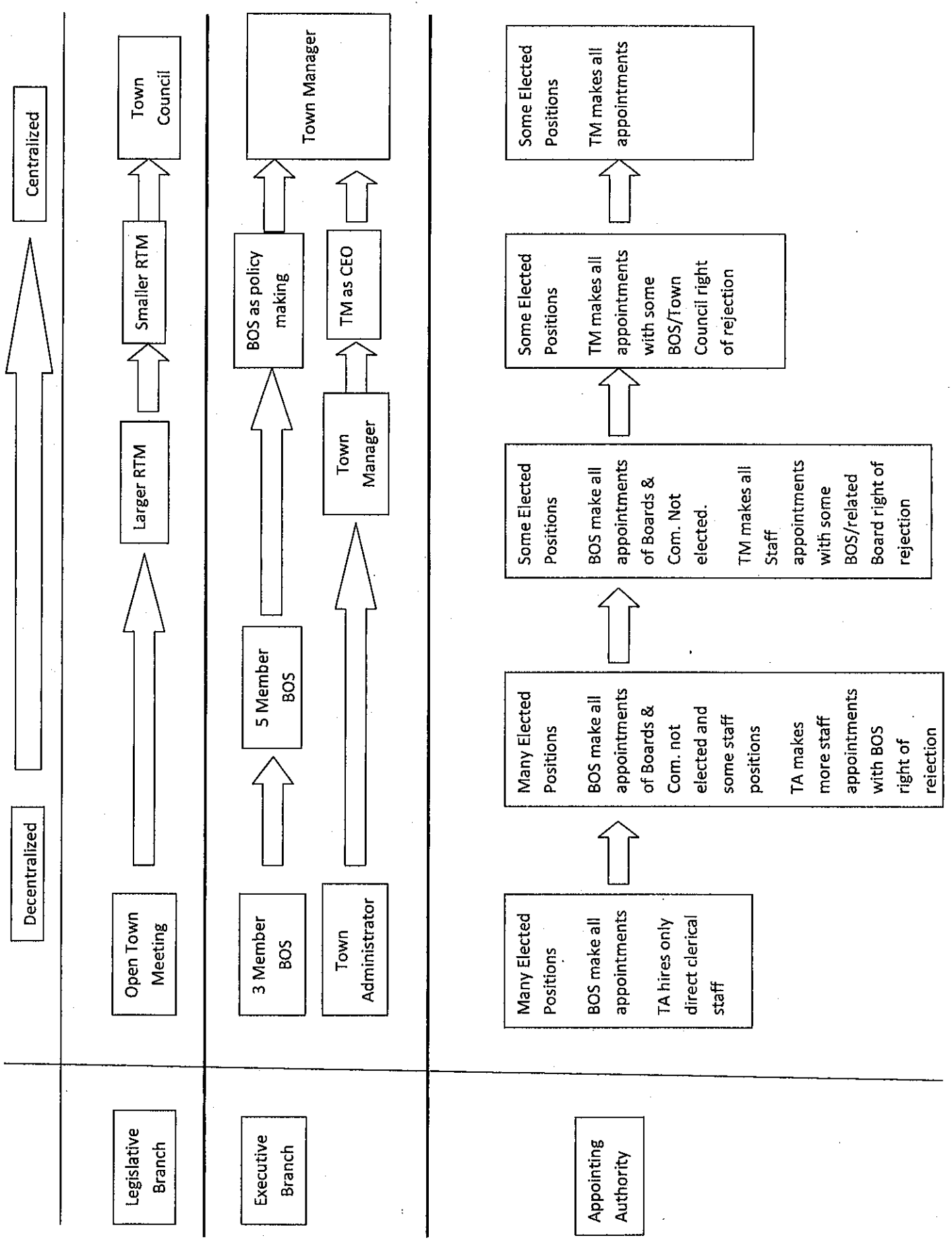
Abington	Framingham	Middleborough	Sudbury
Amherst	Great Barrington	Needham	Swampscott
Andover	Holden	Norwood	Tewksbury
Arlington	Hull	Plymouth	West Boylston
Ashburnham	Ipswich	Sandwich	Westford
Becket	Lakeville	Saugus	Weston
Concord	Lee	Sheffield	Williamstown
Dalton	Lenox	Shrewsbury	Wilmington
Danvers	Lexington	Spencer	Yarmouth
Foxborough	Medway	Stoneham	

*Note: Weymouth and West Springfield had special acts for town government prior to adopting a home rule charter providing for a city form of government. Acton replaced its special act with a home rule charter. Amherst, Danvers and Framingham have had more than one special act. Swampscott's special act is an extensive revision of its home rule charter.*

## Special Acts Used to Create Town Manager or Administrator Position

Brookline	Cohasset	Manchester-	Norfolk
Burlington	Duxbury	by-the-Sea	Somerset
Carver	Holliston	Nahant	Wayland

*Note: Dartmouth replaced special act via home rule charter adoption. Hopedale repealed its special act in 1997.*



Centralized

Decentralized

Legislative Branch

Executive Branch

Appointing Authority

Open Town Meeting

Larger RTM

Smaller RTM

Town Council

3 Member BOS

5 Member BOS

BOS as policy making

Town Manager

Town Administrator

Town Manager

TM as CEO

Many Elected Positions  
BOS make all appointments  
TA hires only direct clerical staff

Many Elected Positions  
BOS make all appointments of Boards & Com. not elected and some staff positions  
TA makes more staff appointments with BOS with right of rejection

Some Elected Positions  
BOS make all appointments of Boards & Com. Not elected.  
TM makes all Staff appointments with some BOS/related Board right of rejection

Some Elected Positions  
TM makes all appointments with some BOS/Town Council right of rejection

Some Elected Positions  
TM makes all appointments

# Charter Basics

## Town Manager/Town Administrator Form

In Massachusetts local government there are many different forms of government that have been established. The vast majority of these forms are based on certain fundamental principals but have variations based on the needs of the community. These needs could be based on politics, economic needs or needs simply based on the size of the community. In short, no one form of government is established as a “one size fits all”. The Town Manager Form of government is the most centralized in terms of administrative authority of all town forms of government. The Town Administrator is the next most centralized form though it must be noted that some Town Administrator Forms may be equally as strong, as or stronger than some Town Manager forms. To determine the level of authority of a position, the most important elements of a charter are contained in the following sections: **Division of Powers; Town Manager/Town Administrator Qualifications; Powers and Duties of Town Manager/Town Administrator; Appointing Authority – Staff; Appointing Authority – Volunteer Boards, Committees, and Commissions.**

- **Division of Powers**

This section of the charter describes the separation of local government powers. They are the Legislative, Executive, and Administrative branches. Typically, this language speaks to how the legislative and executive authority of the Town is formed and how the authority is distributed. In the example given, this language speaks to an Open Town Meeting form of legislative authority with the Town Manager serving as the chief executive authority and all other elected boards and authorities as the chief policy making authorities.

**Example:** *All legislative powers of the town shall be exercised by a town meeting open to all voters. The administration of all town fiscal, prudential and municipal affairs shall be vested in the executive branch comprised of a town manager and elected, independent boards pursuant to their enabling legislation.*

The other possible forms of legislative authority include an elected Representative Town Meeting (RTM) form and a Town Council form. An example of a Representative Town Meeting form would include language to the effect:

*The legislative body of the town shall be a representative town meeting to consist of not less than 270 members, and not more than the closest higher number of members necessary to achieve an equal number of members from each District who shall be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.*

A Town Council form is very similar to a City Council in that this Board will often serve in a dual role of being the chief policy making board and as well as the legislative authority of the Town. Examples of a Town Council form of government would include language to the effect:

*The legislative body of the Town shall be a Town Council whose members shall be elected to meet, deliberate, act and vote in exercise of the corporate powers of the Town. -Except as otherwise may be provided by this Charter, all general, corporate, legislative and appropriations powers of the Town shall be vested in the Town Council.*

- **Town Manager/Town Administrator Qualifications**

This section of a charter describes the level of qualifications for a position with this level of authority. The level of experience can certainly vary based on the level of authority placed in this position. A Town Administrator might be expected to have a little less experience in a weaker charter form. The same can be said of a weak Town Manager charter. Conversely, some communities are very clear about the minimum qualifications that must be met for a manager to be considered. Some examples of charter language are the following:

**Example:** *The selectmen elected as provided herein shall appoint, as soon as practicable, for a term of three years, a town manager who shall be a person especially fitted, in their opinion, by education, training and experience to perform the duties of the office.*

In some instances, the qualifications of a Town Manager/Town Administrator are much more explicit in that they may require a minimum amount of education, experience, and credentials. A second example of such language is as follows:

*The Town Manager shall be a professionally qualified person of proven ability, especially fitted to perform the duties of the office by education, training and previous experience in municipal administration. The Town Manager shall have a Bachelors Degree; preferably a Masters Degree, in Public Administration, Business Management or related field; at least seven (7) years experience in an upper level executive municipal position; or equivalent combination of education and experience. An ICMA credentialed manager is preferred.*

- **Power and Duties of Town Manager/Town Administrator**

The Town Administrator or Town Manager is typically the Chief Administrative Officer or, in some cases, the Chief Executive Officer of a town. The duties can vary from place to place but usually involve responsibilities over preparation of the annual operating and capital budgets, oversight and supervision of all personnel actions including negotiation of collective bargaining agreements and serving as the chief procurement officer of a



town. The Town Manager or Town Administrator reports directly to the Board of Selectmen and is responsible for carrying out Board policies and procedures. An example of a list of typical responsibilities is listed below:

**Example:** *The town manager shall be the chief administrative officer of the town and shall be responsible to the board of selectmen for the proper operation of town affairs for which the town manager is given responsibility under the charter. The powers, duties and responsibilities of the town manager shall include, but not be limited to, the following:*

- (a) to supervise, direct and be responsible for the efficient administration of all employees appointed by the town manager and their respective departments and of all functions for which the town manager is given responsibility, authority or control by the charter, by by-law, by town meeting vote or by the board of selectmen;*
- (b) to administer, either directly or through persons supervised by the town manager, general and special laws applicable to the town, all by-laws and all regulations established by the board of selectmen;*
- (c) to coordinate all activities of town departments under the direction of the board of selectmen and the town manager with the activities of departments under the control of officers, boards or commissions elected directly by the voters of the town;*
- (d) to keep the board of selectmen fully informed as to the needs of the town and to recommend to the selectmen for adoption, such measures requiring action by them or by the town as the town manager deems necessary or expedient;*
- (e) to ensure that complete and full records of the financial and administrative activity of the town are maintained and to render reports to the board of selectmen as may be required;*
- (f) to administer personnel policies, practices or rules and regulations, any compensation plan and any related matters for all municipal employees and to administer all collective bargaining agreements entered into by the town, except for school department agreements;*
- (g) to fix the compensation of all town employees appointed by the town manager within the limits established by appropriation and any applicable compensation plan;*
- (h) to negotiate all contracts with town employees over wages and other terms and conditions of employment, except employees of the school department; provided, however, that the town manager may employ, subject to the approval of the board of selectmen, special counsel to assist in the performance of these duties;*
- (i) to prepare and submit an annual operating budget and capital improvement program as provided in sections \_\_\_\_ and \_\_\_\_;*
- (j) to keep the board of selectmen and the finance committee fully informed as to the financial condition of the town and to make recommendations to the board of selectmen and to other elected and appointed officials as the town manager deems necessary or expedient;*
- (k) to investigate or inquire into the affairs of any town department or office under the supervision of the town manager or the job-related conduct of any officer or employee thereof; and*
- (l) to perform such other duties as necessary or as may be assigned by the charter, by*

*by-law, by town meeting vote or by the board of selectmen.*

- **Appointing Authority – Staff**

In most instances, this is where the significant differences lie with respect to the variations between a Town Manager or a Town Administrator. In instances involving a strong Town Manager Charter, the Town Manager has sole and exclusive authority in appointing most if not all town employees and department heads. Such appointments may sometimes be subject to some level of oversight or veto authority by the Board of Selectmen or Town Council. A good example of such is the following:

**Example:** *As provided for in this Act, [the town manager shall] appoint and remove all non-elected department heads, approve the appointment and removal of all other employees except employees of the school department. The town manager shall consult with the appropriate elected or appointed board, commission, committee, or official prior to making such department head appointments or removals. Appointments to such department head positions shall become effective on the twentieth day following the day notice of appointment or removal is filed with the board of selectmen, unless the board of selectmen shall within that twenty (20) day period, by at least a majority vote of the current elected members, vote to reject said appointment or removal, or sooner, by at least a majority vote of the current elected members, vote to affirm said appointment or removal.*

- **Appointing Authority- Volunteer Boards, Committees, and Commissions**

There are often several variations with respect to the appointments of Volunteer Boards, Committees, and Commissions. Some of this authority lies with the Town Manager or Town Administrator and other instances the appointment authority can be vested with the Board of Selectmen, the Town Council or, in some cases, the Town Moderator. Some examples of this language are as follows:

**Appointments** — *The board of selectmen shall appoint: a town administrator; constables, registrars of voters and other election officers, but not the town clerk; the members of the board of appeals, conservation commission, historic district commission, industrial development finance authority, if any, and other members of multiple member bodies the functions of which do not involve direct operating responsibilities but are primarily policy making or advisory in nature and other individuals who are to serve as representatives of the town to the governing or advisory bodies of area, regional or district authorities.*

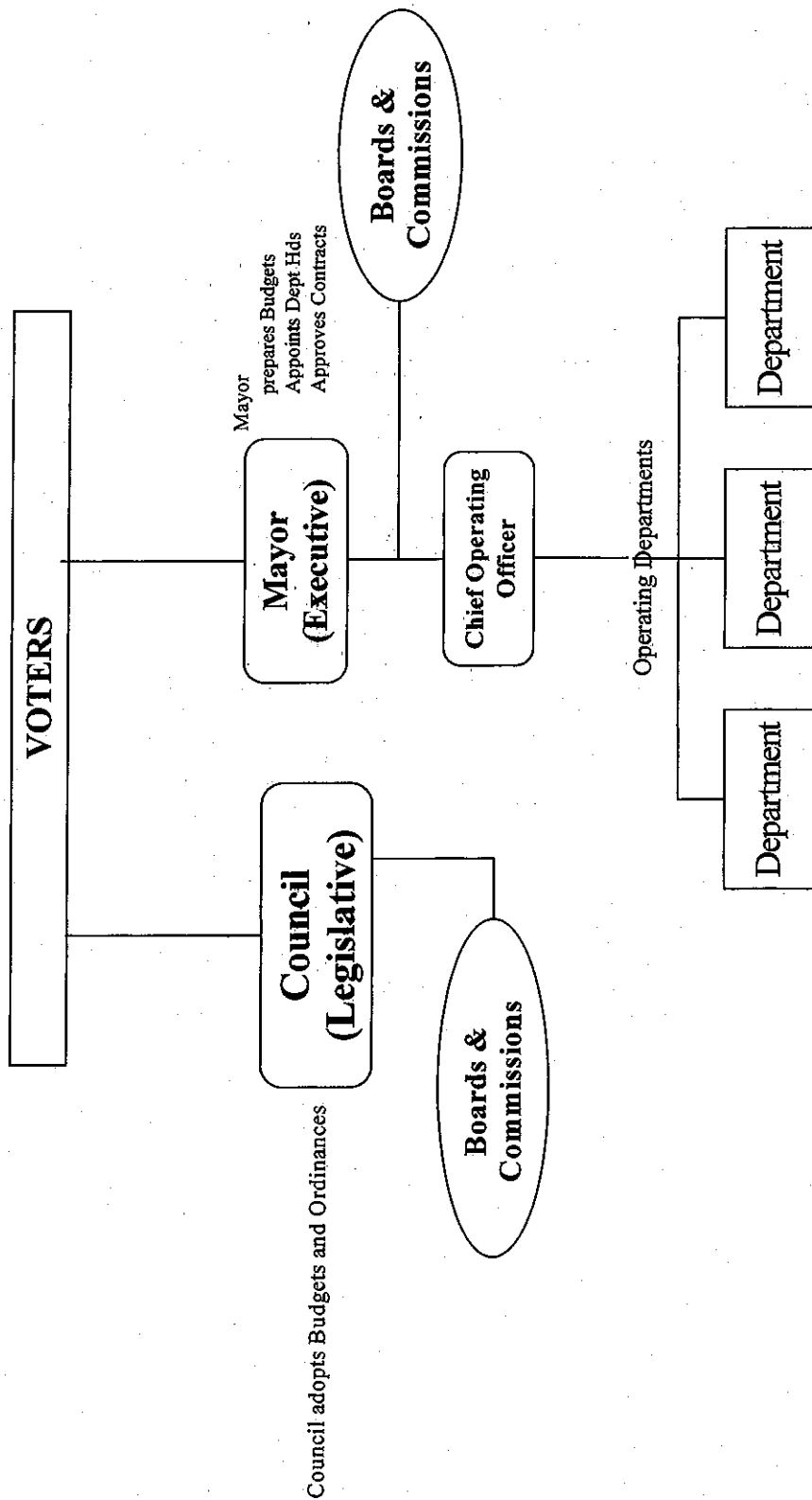
The above is an example where several Volunteer, Boards, Committees, and Commissions are appointed by the Board of Selectmen. In another example cited below, the Town Administrator may appoint such members but subject to further approval by a Town Council.

This example reads:

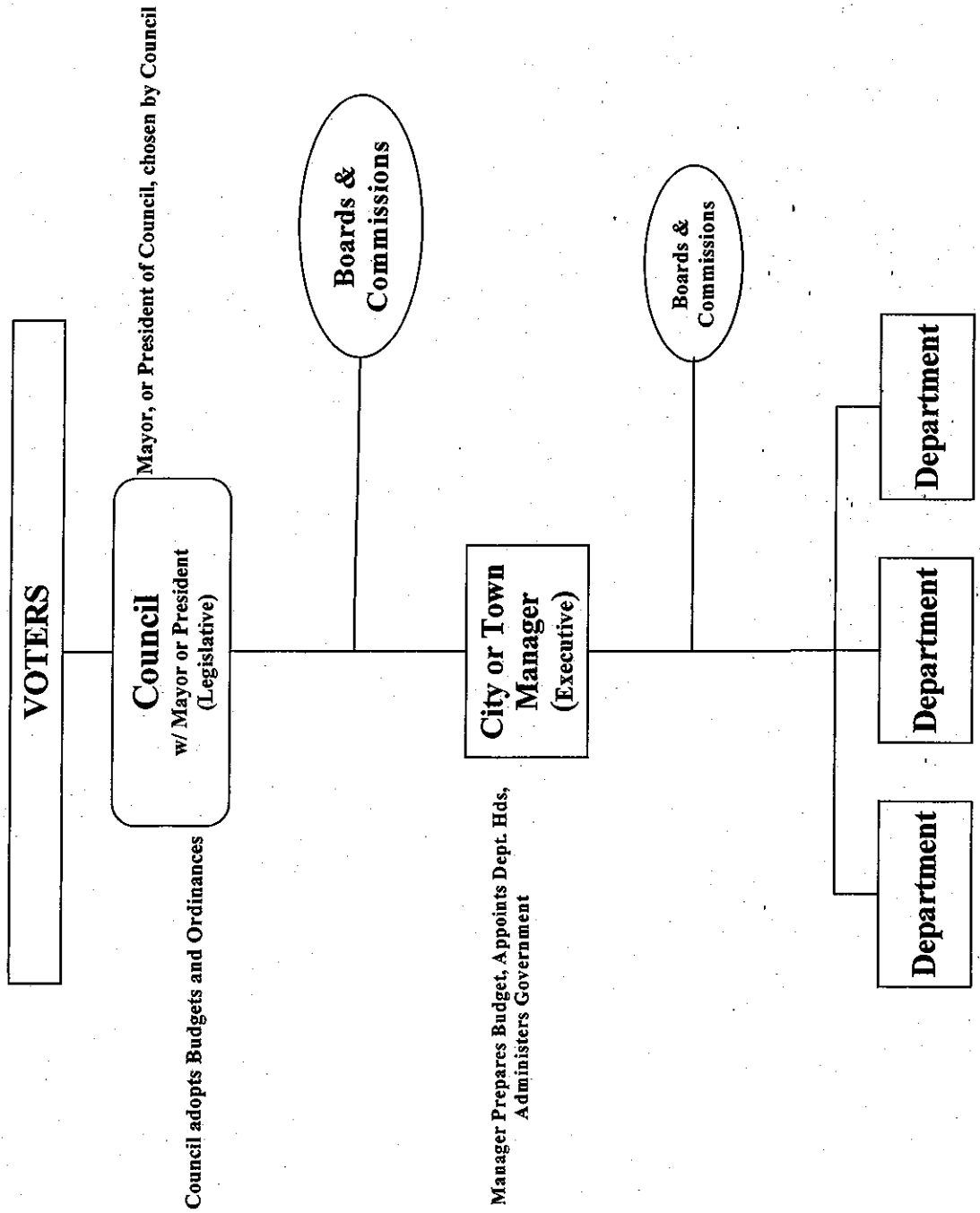
*Subject to ratification by the Town Council, the Administrator shall have the power to appoint; on the basis of merit and fitness alone: ...three (3) registrars of voters; (b) nine (9) members of a Council on Aging, seven (7) members of a Conservation Commission, seven (7) members of an Historic Commission and three (3) members of a Zoning Board of Appeals, all for three-year overlapping terms of office; (c) fifteen (15) members of an Industrial and Development Commission and five (5) members of an Industrial Development Financing Authority, all for five-year overlapping terms of office; (d) five (5) members of a Personnel Board for terms as fixed through bylaw; (e) four (4) members of a Housing Authority and four (4) members of a Redevelopment Authority, all for five-year overlapping terms of office with the fifth member of each board to be appointed under the authority of the Commonwealth; and (f) members of such other boards, commissions and committees and individual town officers and employees as are authorized by general law, this Charter or bylaw and for whom appointment is not otherwise provided.*

# MAYOR / COUNCIL

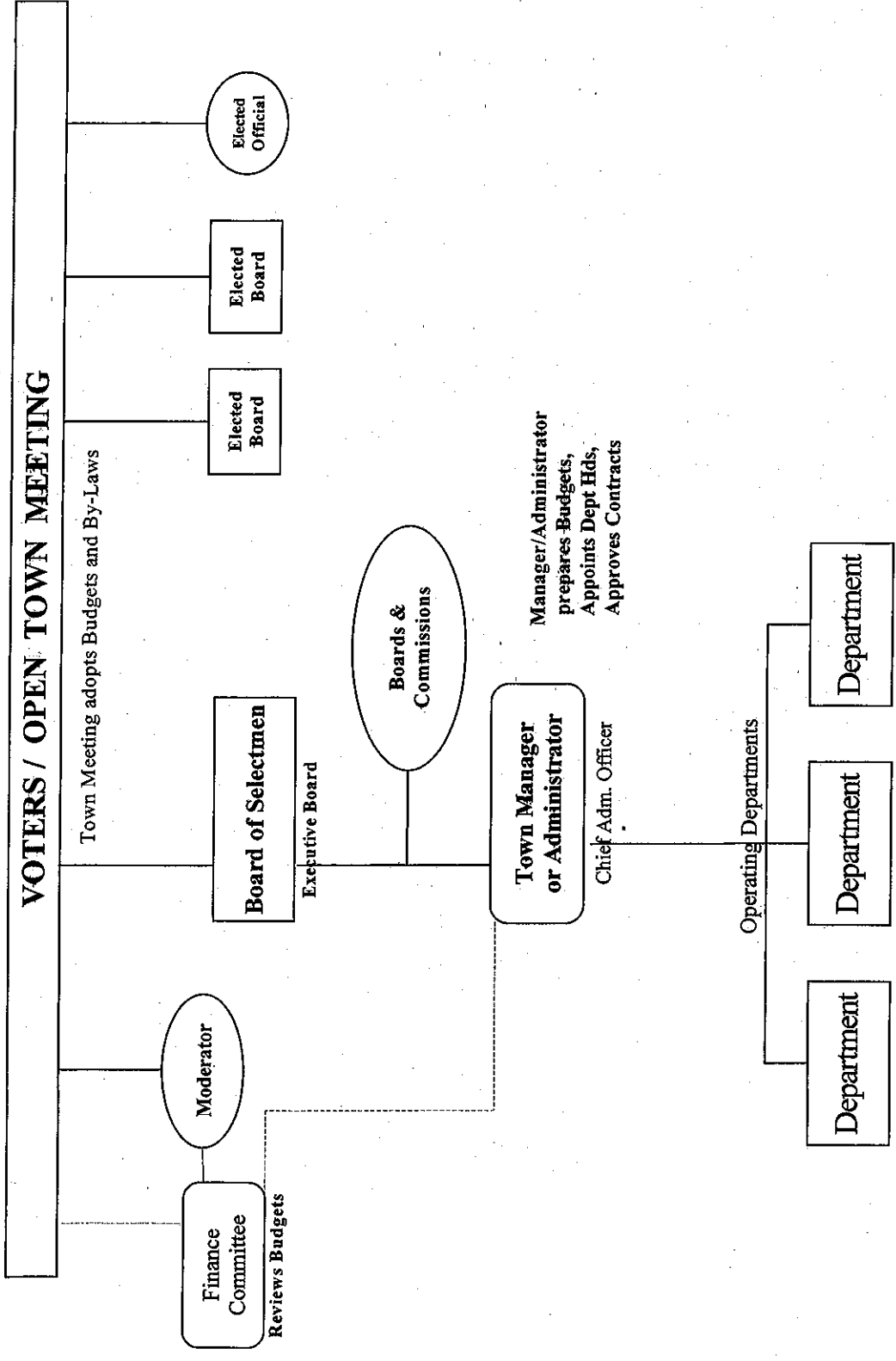
(Strong Mayor  
w/ Chief Operating Officer)



# COUNCIL / MANAGER



# OPEN TOWN MEETING / SELECTMEN / TOWN MANAGER or ADMINISTRATOR



# REPRESENTATIVE TOWN MEETING / SELECTMEN / TOWN MANAGER or ADMINISTRATOR

