

GOVERNMENT STUDY ADVISORY | TOWN OF DUXBURY

A COMMUNITY COMPACT CABINET INITIATIVE

NOVEMBER 2017



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

PREPARED BY:

DLS | Technical Assistance Bureau

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DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Christopher C. Harding
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

November 9, 2017

Board of Selectmen
878 Tremont Street
Duxbury, MA 02332
c/o Town Manager

Dear René Read,

I am pleased to present the Town of Duxbury with the enclosed structure and bylaw recommendations for the Board of Selectmen on behalf of the Town Government Study Committee as part of the Baker-Polito Administration's Community Compact Cabinet initiative. This collaborative program strives to create clear mutual standards, expectations, and accountability for both the state and municipalities. It is my hope that our guidance provides direction and serves as a resource for local officials as we build better government for our citizens.

If you have any questions regarding the report, please contact Zack Blake, Technical Assistance Bureau Chief, at (617) 626-2358 or blakez@dor.state.ma.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean R. Cronin".

Sean R. Cronin
Senior Deputy Commissioner

Supporting a Commonwealth of Communities

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INTRODUCTION

At the Town of Duxbury Board of Selectmen's request, the Division of Local Services (DLS) Technical Assistance Bureau (TAB) reviewed potential structural changes and bylaw amendments being examined locally by the appointed government study committee. As a best practice, every eight to ten years, a community should conduct formal reviews of its government structure to ensure it can remain proactive and progressive in addressing emerging challenges, sustaining fiscal health, and modernizing procedures. By periodically assessing and modifying town government, local leaders and residents can ensure it continues to provide the support needed to reinforce sound practices related to fiscal stewardship, service effectiveness, and resource efficiency.

Located 35 miles south of Boston, the Town of Duxbury (pop. 15,483) is home to an extensive coastline, pristine beaches, and the locally celebrated Powder Point Bridge. Apart from its serene beauty, the town boasts a top-rated school system, maintains a AAA bond rating, and operates the newest regionalized emergency services dispatch center in the area. Above-average wealth factors also contribute to Duxbury's desirability. The town's 2014 per capita income of \$85,683 was 104 percent above the state average, and its 2016 equalized valuation per capita of \$252,191 was 15 percent above. Fully three-quarters of Duxbury's \$78M budget comes from the property tax levy, which is funded 96 percent by the residential class.

Duxbury is governed by a three-member board of selectmen and open town meeting. The town has five separately elected boards and committees (assessing, housing authority, library, planning, and school), each with a department head reporting to it. Among the modern and admirable features of Duxbury's local government are a town manager with broad authority, a consolidated finance department led by a finance director and including a combined treasurer/collector operation, appointed status for all finance officers, strong partnership between town and school offices, healthy financial reserve levels, and a desire to continually improve the management structure and framework.

Over the past five years, town meeting has authorized the construction of a \$130M middle and high school campus, \$6.3M police station, and renovations of the Percy Walker pool, fire station, and senior center. In addition, there are currently proposals being discussed to expand the senior center and public works facilities. The continued investment in infrastructure signals strong commitments by residents and officials to sustain Duxbury's long-term vitality and desirability.

TOWN GOVERNMENT STUDY COMMITTEE

In March 2015, town meeting approved the formation of an ad hoc town government study committee (TGSC) to review and provide recommendations on the town's form of government, organizational structure, and bylaws. The nine-member committee was appointed by the town moderator and includes local officials and residents representing financial, executive, school, and other citizenry of the town.

During FY2016, the TGSC conducted numerous interviews with local officials, attended various town committee meetings, met with officials from TAB, and researched matters relative to its charge. To begin developing goals, the TGSC issued a well-publicized 19 question, online survey early in 2016 that sought input on a variety of topics, including elected versus appointed boards, the scheduling of annual town meeting, the number of select board members, and suggestions to improve town government.

It is important to note that this survey, with 585 responses (3.8 percent of population), reached more than double the audience of that year's town meeting. The common responses were in favor of retaining open town meeting, continuing to elect various local officials, changing the date of annual town meeting, and increasing the size of the select board. The survey's comments section elicited a few recurring themes, such as insufficient transparency, high property taxes, sidewalk and street safety, and an antiquated town meeting process.

From its charge and related research, the TGSC developed goals and objectives and presented interim reports to town meeting in March 2016 and 2017. Initially, the committee was scheduled to conclude its work and present findings at the March 2017 annual town meeting, but due to the volume and pace of work, the TGSC received an extension from the select board to continue through March 2018. Within the scope of its charge, the committee members vetted and rejected taking action on the following proposals: adopt a representative form of town meeting, modify the general bylaws to permit recall of elected officials, convert the elected town clerk, board of assessors, planning board, and library trustees to appointed positions

As the TGSC analyzes its remaining objectives, committee members met with TAB officials in July 2017 and requested guidance on increasing the number of select board members, establishing an audit committee, modifying line authority and reporting relationships in the planning department, and forming a municipal building committee. During the consultation, committee members expanded the scope and actively sought advice on a wide variety of issues, including best practice recommendations, and bylaw amendments to effectuate even broader change for the town. To this end, we provide relevant recommendations for the TGSC to consider.

RECOMMENDATIONS

Expand the Size of the Board of Selectmen: We recommend expanding the board of selectmen by increasing its membership from three to five. A three-member board works well in smaller towns with populations under 10,000, in which selectmen play stronger administrative roles in daily municipal affairs. However, Duxbury has over 15,000 residents (including more than 3,000 students), manages an operating budget of \$78M, and provides a wide array of municipal services. In addition to their statutory responsibilities, selectmen participate on ad hoc committees, research and act upon all town meeting issues, supervise the town manager, review capital and operating budgets, enact local policy decisions, and serve as sewer commissioners.

Less than half of all Plymouth County communities (41 percent) operate with three-member select boards. And of the 10 communities closest in population to Duxbury, East Bridgewater is the only other town to operate with a three-member select board.

Plymouth County Communities	Population (2015)	BOS Board	Annual Town Meeting Date	Town Election Date
Plympton	2,917	3	May (3rd Wed)	May (3rd Sat)
Marion	5,086	3	May (2nd Mon)	May (Fri after 2nd Mon)
Rochester	5,494	3	May (3rd Mon)	May (2nd Wed)
Mattapoisett	6,267	3	May (2nd Mon)	May (3rd Tues)
West Bridgewater	7,094	3	Discretion of BOS	April (2nd Sat)
Halifax	7,834	3	May (2nd Mon)	May (Sat after 2nd Mon)
Hull	10,491	5	May (1st/2nd Mon, by BOS vote)	May (3rd Mon)
Hanson	10,630	5	May (1st Mon)	May (3rd Sat)
Norwell	10,984	5	May (2nd Mon)	May (Sat after 2nd Mon)
Lakeville	11,338	3	May (2nd Mon)	Apr (1st Mon)
Carver	11,629	5	Apr/May/Jun discretion of BOS	Apr (4th Sat)
Kingston	13,301	5	Apr/May/Jun discretion of BOS	Apr (4th Sat) or other
East Bridgewater	14,343	3	May (2nd Mon)	Apr (Sat after 1st Mon)
Hanover	14,424	5	May (1st Mon)	May (Sat after 1st Mon)
Whitman	14,849	5	May (2nd Mon)	May (3rd Sat)
Duxbury	15,483	3	March (2nd Sat)	March (4th Sat)
Abington	16,227	5	Apr (1st Mon)	Apr (last Sat)
Rockland	17,832	5	Discretion of BOS	Apr (2nd Sat)
Pembroke	18,273	5	May (2nd Tues)	May (Sat after 2nd Tues)
Scituate	18,478	5	Apr (2nd Mon)	6th Sat after ATM
Wareham	22,408	5	Apr (4th Mon)	Apr (1st Tues)
Hingham	23,120	3	Apr (4th Mon)	Apr/May (1st Sat after ATM)
Middleborough	24,350	5	Apr (4th Mon)	Apr (1st Sat)
Marshfield	25,709	3	Apr (4th Mon)	Apr/May (1st Sat after ATM)
Bridgewater	27,628	9 Councilors	May (1st Mon)	Apr (Sat preceding last Mon)
Plymouth	58,890	5	Apr (1st Sat)	May (3rd Sat)
Brockton	95,314	11 Councilors	City Council	

Opponents of a larger select board argue that towns are starved for candidates to run for offices, and increasing the board's size will cause seats to either go unfilled or be filled by residents with

personal agendas. They further contend that the need to “share the workload” has diminished since professional managers (i.e., town managers or administrators) actually run the day-to-day operations. Lastly, they insist that “if it ain’t broke, don’t fix it.” While these may be popular reactions, they overlook the fact that a five-member board offers broader representation of viewpoints, enhances problem solving, and enables more research and analysis. It also reduces the risk of dominating biases, open meeting law violations, and conflicts of interest. With a five-member board, two selectmen may legally speak with one another (but not deliberate), and there is greater availability to attend meetings of other committees to help arrive at important town decisions.

Furthermore, because winning a majority of three votes, versus two, is more difficult, the prospects increase for greater collaboration. With no more than two members elected each year, the board will also experience greater stability and continuity. Lastly, should a board member fall ill or become otherwise unable to perform his or her duties, the town can continue to achieve quorums and operate effectively in the best interests of the residents.

State law precludes making such a change solely through a town meeting vote. Therefore, to institute the change, the town would need to gain approval by town meeting, a special act of the Massachusetts legislature, and voter approval via a referendum. We encourage the town government study committee to work with town counsel and interview officials from other communities¹ that have attempted to implement this change.

Move the Date of Annual Town Meeting: In the TGSC survey, 61 percent of respondents (2.3 percent of population) favored moving annual town meeting to later in the year. However, town meeting voted 80 to 118 on March 11, 2017 to defeat a citizen’s petition requesting a move to May. Despite the failed attempt, we recommend the TGSC present the proposal again using sound evidence and its support behind the recommendation.

Per town bylaw, annual town meeting in Duxbury is held on the second Saturday of March. Not only is this the earliest scheduled annual town meeting date in Massachusetts, but also only seven other communities hold their annual town meeting in March². An early town meeting date puts undue pressure on the town manager, finance director, superintendent, selectmen, school committee,

¹ The following towns have pursued increasing their select boards from three to five members with varying results: Sudbury (successful), Topsfield (successful), Cheshire (in-progress), Hingham (unsuccessful), and Newbury (successful).

² A [2013 study](#) conducted by the Massachusetts Municipal Association found that only eight of 351 communities across the state held annual town meeting in March. The majority of annual town meetings are held in May.

finance committee, and fiscal advisory committee to complete their work on the operating and capital budgets in a compressed time frame. The early date can also deny the town access to important, relevant information concerning state aid, motor vehicle excise trends, vendor price increases, and new growth projections. Many towns have recognized that there is little justification, beyond habit, for an early town meeting and have gained valuable analysis time by moving annual town meeting into May or June.

Establish an Audit Committee: We recommend the town establish, by bylaw, an audit committee whose responsibilities would minimally include the following:

- Administer the process for reviewing prospective audit firm bids and make recommendations to the board of selectmen on which bid to award
- Define the scope of services to be performed by the auditor
- Review the performance and independence of the audit firm and report to the board of selectmen on an annual basis
- Review and respond to all management letter comments and to any material issues in the audited financial statements
- Provide an annual report to town meeting on the status of corrective actions

In addition to forming an audit committee, the town should consider readvertising for audit services. As a rule, the town should issue a request for auditing services every five to eight years, provided there is adequate competition among qualified auditors. Based on a review of our records, Duxbury has been with the same outside audit firm, Powers & Sullivan, LLC, for over seven years. Contracting with a new audit firm will not only bring a fresh perspective and foster objectivity, but also reflects good practice. Short of contracting with a new firm, the town can also ask to rotate the audit lead.

As a resource, please review our *Annual Audit Best Practice* found in the Departmental Procedures section of the [TAB website](#).

Redefine the Planning Department's Reporting Structure: The elected planning board currently appoints and oversees the planning director. This officeholder must work frequently with residents, local officials, boards, and agencies to research projects, develop plans, and make recommendations. Crucial to this role is the ability to effectively interact with all town departments in order to synergize planning activities with town priorities and provide valuable recommendations that reflect the community's collective goals. Operating under the sole direction and authority of the planning board restricts the planner's ability to work swiftly and cohesively in the best interests of the town. Day-to-day supervision through the town manager's office, with clear communication to the planning board, optimizes the time and resources of the planning department.

We therefore recommend the town consider adopting a bylaw amendment to make the planning department a management report of the town manager. As language for the bylaw, we suggest: “planning director, appointed by the planning board, shall coordinate the activities of the planning department under the direction of the town manager.”

Establish a Construction Request Procedure: The TGSC discussed whether or not the town would benefit from a municipal building committee to assess construction proposals before a project specific feasibility study committee is formed. We believe there is no need for a new committee but recommend the town develop a construction request procedure that requires:

- All construction requests over [\$200,000]³ be submitted in writing to the town manager and fiscal advisory committee
- Each project request include a department head named as co-sponsor regardless of whether the request is citizen inspired or derived from a department head, board, or committee
- Each proposal be evaluated by the town manager and fiscal advisory committee against clearly defined criteria including the town’s master plan, school improvement plan, building envelope studies, road improvement program, and other relevant materials
- Each approved project be presented to the board of selectmen for support and creation of a project committee

The town may wish to establish a working group comprised of the town manager, facilities manager, and department heads responsible for maintaining town-owned property, which would meet biannually to discuss future capital needs. Discussion among these caretakers often yields consensus and appreciation for the needs and priorities of other departments and thereby helps the town manager, fiscal advisory board, and select board to focus efforts on well-defined projects.

Define Capital Planning Process: In reviewing town records, we noted the following conflicts and ambiguities as it relates to the town’s capital planning process:

- Chapter 353 of the Acts of 1987, an act providing for a Town Manager for the Town of Duxbury (section 3.B.5) states town bylaws shall define a capital improvement, yet the bylaws are silent on this issue. A well-formed capital improvement definition includes a minimum dollar value and expected useful life of an asset.
- The annual town report asserts that the fiscal advisory committee reviews capital improvements costing more than \$25,000 and with a useful life of three years or greater.

³ Locally adopted threshold

However, article 6, motions 1-4 presented in the March 12, 2016 annual town meeting warrant include capital projects costing both above and below \$25,000. Article 7 of the same warrant defines a \$15,000 threshold for capital requests.

- Section 6.8.2.d of the general bylaws indicates the fiscal advisory committee shall review capital expenditure articles over \$100,000.

To resolve these conflicts, the town should clearly define its capital improvement planning process through bylaw. In doing so, the bylaw's process should include the following: the definition of what constitutes a capital request, the criteria by which capital requests are prioritized, the presentation to town meeting of a comprehensive capital budget warrant article and annual report of the town's capital needs, and the development of multi-year capital plans for long-term departmental needs. The threefold goal of the plan should be to prioritize the proposed capital projects, to estimate project costs, and to determine the method of payment for each project.

Establish a Town/School Financial Team: We recommend the select board sponsor a bylaw to establish a formal working team of town and school finance officials. While we recognize the strength of the existing interactions among these individuals, formalizing their relationship signals a commitment to ensure continuity, increase transparency, and enhance public trust. A formally established financial team has proven to be an effective tool for addressing local fiscal policy, identifying opportunities to share services, offering early strategies to deal with anticipated areas of concern, and improving long-range planning. Chaired by the finance director, the team should include the town manager, superintendent, treasurer/collector, town accountant, and school business manager. We further advise the finance director establish a regular meeting schedule to provide a consistent forum for the discussion of budget, capital plan, procurement matters, state and federal regulatory calendars, and other finance-related deadlines.

Eliminate the Health Insurance Trust Fund: We recommend that the town transition from its self-insured group health plan to a fully premium based option, like the State's Group Insurance Commission (GIC). Over the years and as recently as 2016, Duxbury's health claims trust fund reported year end deficits. As a strategy, successfully managing a self-insured group health plan requires constant vigilance through good controls, monitoring funding requirements, and aggressively seeking cost reductions. In bearing this risk, the town is also more vulnerable to successively high-cost, catastrophic claims that could wreak havoc on the trust's long-term financial viability.

Adopt Reconciliation and Ambulance Receivables Financial Policies: We recommend that the town adopt financial policies on reconciliation and ambulance receivables based on recent management letter deficiencies in these areas. Adopting and implementing strong reconciliation and ambulance

receivables financial policies will strengthen the town's internal controls, provide instructive guidance, and promote consistency as local officials plan, direct, monitor, and protect municipal assets and resources.

Attached are sample policies that contain specific provisions that local leaders need to decide upon before adoption. Additional sample financial policies can be found on the DLS website under [Community Compact Reports](#).

Update the Town Website: Duxbury's website provides departmental listings, contact information, community links, forms and applications, online payment options, news, and announcements. A comprehensive, up-to-date website generates public awareness, promotes confidence in government, and offers opportunities for greater citizen engagement. During our review, we noted the following items were either absent or difficult to locate, which should be easily available to residents:

- Town meeting minutes and voting results
- Finance and fiscal advisory committee agendas and minutes
- 5-year capital improvement plan
- Current personnel bylaw

We further recommend that the town explore additional online tools to promote transparency, foster citizen engagement, and facilitate open data such as a financial dashboard, urban planning platform, and open checkbook visualization.

Increase Remote Participation at Town Meeting: Based on resident feedback through the TGSC survey, social media, and to local officials directly, there is a growing interest in remote town meeting participation via computer, tablet, or smartphone. While the TGSC embraces this notion by some residents, the committee's final report should explain the reasons preventing such online participation at this time. Specifically, open meeting law, as outlined in [M.G.L. c. 30A, § 20](#) and clarified in [940 CMR 29.00](#), stipulates certain requirements that when applied to remote participation at annual town meeting are logistically and financially prohibitive.

Disband Personnel Board: In communities, such as Duxbury, that employ a full-time human resource director we view the personnel board as duplicative and unnecessary to the town's in-house professional management

Review the Town's General Bylaws: As a follow-up to the work of the TGSC, Duxbury should review its town bylaws. Communities establish a set of bylaws to define and describe government

structure, appointing authorities, procedures and local prohibitions. Below are specific areas the town should consider:

Annual Audit - Chapter 3, section 3.1.4 of the town's bylaws currently reads "The Board of Selectmen shall cause a biennial audit of the Town's financial records to be accomplished by and carry the report thereon of an independent accountant or accounting firm." We recommend that the town update this bylaw to reflect that an annual audit is required for federal grants management compliance with the Omni-Circular, as published by the Office of Management and Budget.

Employee as an Elected Official - Chapter 3.1.2 of the town's bylaws currently reads "No person shall hold, at one time, the offices of Board of Selectmen and Assessor." We recommend the town expand the scope of this bylaw to prohibit an active employee, regardless of department or board, from holding any elective office or serving as an appointed member of a board or committee. It is not optimum when employees in one town department sit on a board or committee which, under its charge, manages, influences, or otherwise sits in judgment of other town departments.

Elected Officials Holding Multiple Offices - Establishing clear lines of authority and eliminating conflicts of interest provide for strong governance and transparency. We recommend, as a preventative measure, the town establish a bylaw prohibiting elected officials from holding more than one elective office concurrently, and from serving on an appointed board or committee while holding elective office.

Tax Enforcement - Although Duxbury's Treasurer/Collector currently accepts partial payments for tax liens on parcels in tax title, [M.G.L. c. 60, § 62A](#) requires a bylaw to authorize such payments. The town's bylaws are silent on tax enforcement regulations.

License Denial due to Outstanding Taxes – Under the current bylaw, based on [M.G.L. c. 40, § 57](#), the town is allowed to deny, revoke, or suspend licenses or permits for nonpayment of taxes and other municipal charges older than 12 months based on an annual list. The town should update its bylaws to reflect the changes made under [Chapter 218 of the Acts of 2016](#), known as the Municipal Modernization Act, which allows collectors to furnish information to their license and permit granting departments and boards where the delinquency exists for some period *less than 12 months*.